CLERK'S COPY

# TRANSCRIPT OF RECORD

## Supreme Court of the United States

**OCTOBER TERM, 1932**

## No. 63

A. P. DICKSON, JOE DICKSON, I. N. CALVERT, ET AL., PETITIONERS,

*vs.*

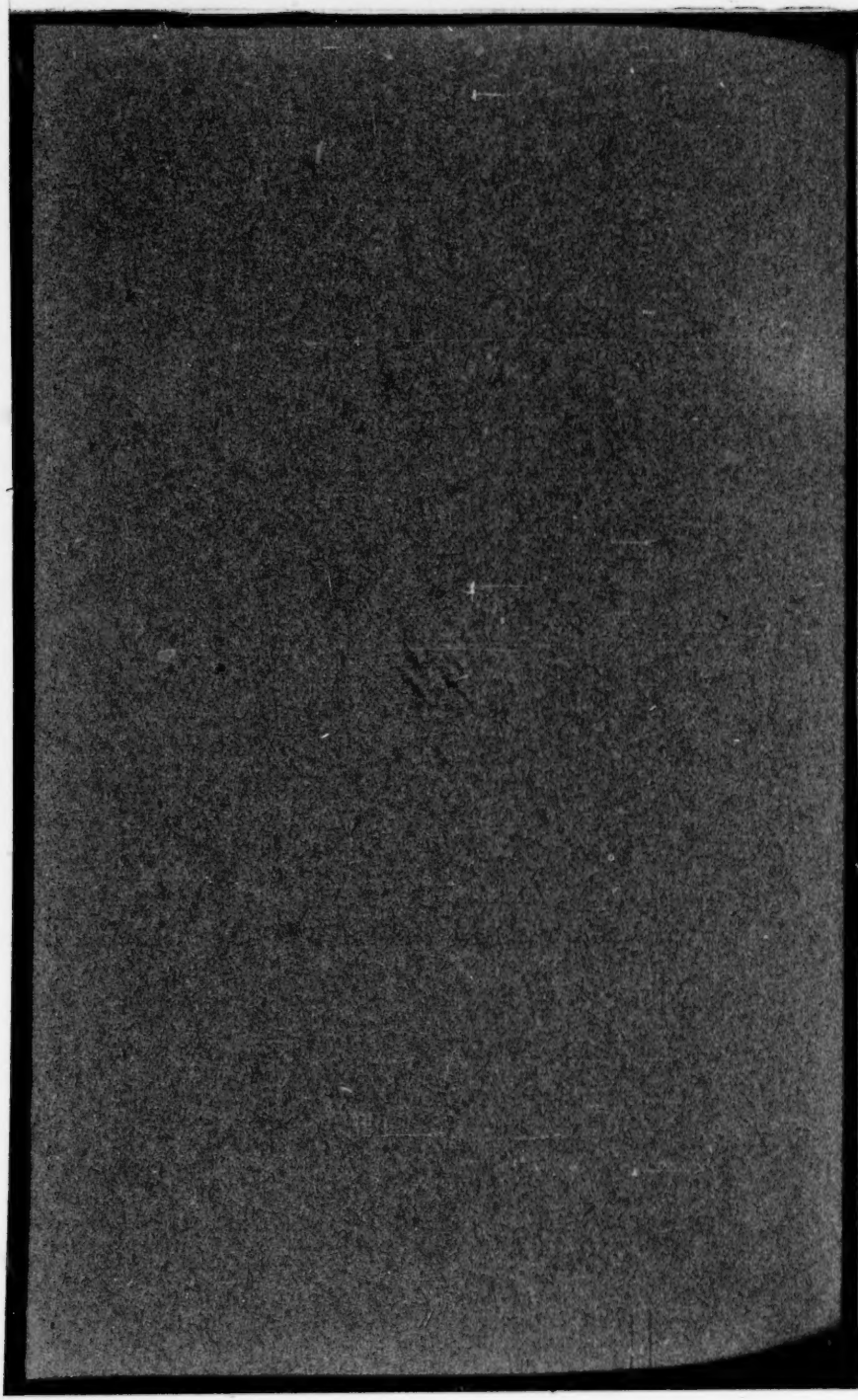
UHLMANN GRAIN COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

**PETITION FOR CERTIORARI FILED MAY 9, 1932**

**CERTIORARI GRANTED OCTOBER 10, 1932**

**(36,744)**



# (36,744)

# SUPREME COURT OF THE UNITED STATES

## OCTOBER TERM, 1932

# No. 63

A. P. DICKSON, JOE DICKSON, I. N. CALVERT, ET AL., PETITIONERS,

*vs.*

UHLMANN GRAIN COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

INDEX


| | Original | Print |
|---|---|---|
| Proceedings in United States circuit court of appeals, eighth circuit | *a* | 1 |
| Caption (omitted in printing) | *a* | |
| Record from district court of the United States, Western Missouri | 1 | 1 |
| Citation and admission of service (omitted in printing) | 1 | |
| Record entry of filing of petition | 2 | 1 |
| Petition | 2 | 1 |
| Exhibit A—Statement, Uhlmann Grain Company to A. P. Dickson, December 2, 1904 | 4 | 2 |
| Demurrer and answer of defendant | 4 | 3 |
| Stipulation for continuance | 7 | 6 |
| Stipulation for continuance | 7 | 6 |
| Stipulation waiving jury | 7 | 7 |
| Order consolidating cases Nos. 6044, 6045, 6062, 6200, and 6201 | 8 | 7 |


JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., OCTOBER 25, 1932

| | Original | Print |
|---|---|---|
| Minute entry of trial, May 21, 1928 | 8 | 7 |
| First amended answer | 8 | 8 |
| Reply to first amended answer | 11 | 11 |
| Trial, May 22, 1928 | 12 | 12 |
| Trial, May 23, 1928 | 12 | 12 |
| Judgment | 12 | 12 |
| Motion for new trial | 19 | 19 |
| Petition for appeal and allowance thereof | 20 | 20 |
| Assignment of errors | 20 | 21 |
| Order fixing amount of bond on appeal | 21 | 22 |
| Bond on appeal (omitted in printing) | 21 | |
| Order, December 7, 1929, extending time to file transcript | 23 | 22 |
| Election as to printing of record | 23 | 23 |
| Order, January 7, 1930, further extending time to file transcript | 24 | 23 |
| Order, February 7, 1930, further extending time to file transcript | 24 | 24 |
| Order, March 6, 1930, further extending time to file transcript | 25 | 24 |
| Order, April 4, 1930, further extending time to file transcript | 25 | 24 |
| Order overruling motion for new trial | 25 | 25 |
| Order, April 24, 1930, extending time to file bill of exceptions | 26 | 25 |
| Order, May 7, 1930, further extending time to file transcript | 26 | 26 |
| Order, June 6, 1930, further extending time to file transcript | 26 | 26 |
| Order, July 7, 1930, further extending time to file transcript | 27 | 27 |
| Order, September 6, 1930, further extending time to file trancript | 27 | 27 |
| Order, November 1, 1930, further extending time to file bill of exceptions | 28 | 27 |
| Order, November 6, 1930, further extending time to file transcript | 28 | 28 |
| Bill of exceptions | 28 | 29 |
| Caption | 29 | 29 |
| Testimony for plaintiff | 29 | 30 |
| Testimony of O. W. Rowe | 29 | 30 |
| Plaintiff's exhibits | 31 | 31 |
| 1—Telegram | 31 | 31 |
| 2—Confirmation of trade for account of S. P. Dickson | 32 | 33 |
| 3—Statement of account between Uhlmann Grain Company and A. P. Dickson | 35 | 34 |
| 4—Statement of account between Uhlmann Grain Company and Joe Dickson | 39 | 36 |

| | Original | Print |
|---|---|---|
| 5—Statement of account between Uhlmann Grain Company and I. N. Calvert | 41 | 37 |
| 6—Statement of account between Uhlmann Grain Company and Ernest Miller | 45 | 39 |
| 7—Statement of account between Uhlmann Grain Company and C. R. Dickinson | 47 | 40 |
| 8—Account of purchase and sale by Uhlmann Grain Company for A. P. Dickson | 55 | 45 |
| 8-A—Confirmation of purchase by Uhlmann Grain Company for A. P. Dickson, March 31, 1924 | 55 | 45 |
| 8-B—Confirmation of sale by Uhlmann Grain Company for A. P. Dickson, March 28, 1924 | 56 | 46 |
| 9—Reproduction of operator's receipt of message | 61 | 50 |
| 10—Promissory note, C. L. Dickinson to Uhlmann Grain Company, $4,000.00, October 8, 1924 | 65 | 51 |
| 11—Promissory note, W. L. Dickinson et al. to Uhlmann Grain Company, $3,000.00, October 8, 1924 | 65 | 51 |
| 12—Promissory note of C. R. Dickinson et al. $1,000.00, October 8, 1924 | 65 | 51 |
| 13—Promissory note, Ernest Miller to Uhlmann Grain Company, $4,000.00, October 8, 1924 | 65 | 54 |
| Testimony of Richard Uhlmann | 73 | 60 |
| Plaintiff's exhibits | 76 | 63 |
| 14—Confirmation of purchase of November 15, 1924 | 76 | 63 |
| 15—Memorandum as to | 76 | 63 |
| 16—Telegram dated August 19, 1924 | 76 | 63 |
| 17—Confirmation of purchase, May 17, 1928 | 77 | 64 |
| 18, 19 and 20—Rules and by-laws of Chicago, Minneapolis & Winnipeg Grain Exchanges in force in 1924 | 78 | 65 |
| 21—Confirmation by R. B. McClean Grain Company, Limited, August 27, 1924 | 83 | 71 |
| 22—Confirmation by Sea Board Grain Company, Limited, August 21, 1924 | 85 | 72 |
| 23—Confirmation by Brown Grain Company | 87 | 73 |
| 24—Confirmation by Cargill Commission Company, August 21, 1924 | 89 | 74 |

| | Original | Print |
|---|---|---|
| 25—Report of Uhlmann Grain Company made to United States Department of Agriculture for December 1, 1924.. | 93 | 77 |
| 26—Report of Uhlmann Grain Company made to United States Department of Agriculture for March 31, 1927.... | 95 | 78 |
| 27—Telegram to R. F. Uhlmann, May 21, 1928 ..... | 97 | 79 |
| Rule 4, section 33, of rules of Board of Trade of Chicago ..... | 97 | 79 |
| 28—Record of transactions ..... | 98 | 81 |
| Testimony of W. F. Logan ..... | 106 | 89 |
| Plaintiff's exhibits ..... | 107 | 90 |
| 30—General regulations promulgated by Secretary of Agriculture with respect to contract markets in force in 1924 | 107 | 90 |
| 31—Report of Grain Futures Administration for 1924..... | 110 | 93 |
| Testimony of E. S. McDonough..... | 111 | 95 |
| Benjamin L. Hargis ..... | 122 | 107 |
| Richard Uhlmann ..... | 132 | 119 |
| O. W. Rowe ..... | 135 | 122 |
| Motion of each Defendant for declaration of law and denial thereof ..... | 136 | 124 |
| Testimony for Defendants ..... | 136 | 124 |
| Testimony of Paul Uhlmann..... | 137 | 124 |
| Defendants' exhibits..... | 139 | 127 |
| 1—Notice of purchase of wheat..... | 139 | 127 |
| 2—Notice of sale of wheat..... | 139 | 127 |
| Section 8 of rules and by-laws of Chicago Board of Trade..... | 150 | 139 |
| D—List of Customers at Carrollton.... | 152 | 141 |
| A—Letter, Uhlmann Grain Company to R. A. Thomson, November 12, 1924 ..... | 153 | 142 |
| C—Letter, Uhlmann Grain Company to I. N. Calvert, November 13, 1924 | 153 | 142 |
| Testimony of T. H. Cramer ..... | 154 | 143 |
| Amos Dickson..... | 157 | 147 |
| I. N. Calvert..... | 167 | 158 |
| C. T. Dickinson..... | 168 | 159 |
| O. W. Rowe..... | 170 | 162 |
| Defendants' exhibits ..... | 173 | 164 |
| F—Accounting of purchase and sale of 10 Chicago December wheat..... | 173 | 164 |
| G—Memorandum as to final account rendered to I. N. Calvert..... | 173 | 165 |
| E—Memorandum of account of purchase and sale of Uhlmann Grain Company for Ernest Miller..... | 175 | 166 |

| | Original | Print |
|---|---|---|
| Motion of defendants for judgment and denial thereof | 183 | 169 |
| Findings of fact requested by Plaintiff and refusal thereof | 183 | 169 |
| Findings of fact | 187 | 173 |
| Approval of bill of exceptions by counsel | 189 | 176 |
| Approval of bill of exceptions by district judge | 189 | 176 |
| Præcipe for transcript | 190 | 177 |
| Order, January 6, 1931, further extending time to file transcript | 192 | 178 |
| Opinion, Reeves, J. | 192 | 179 |
| Clerk's certificate [omitted in printing] | 197 | |
| Appearances of counsel [omitted in printing] | 198 | |
| Argument and submission [omitted in printing] | 199 | |
| Opinion, Gardner, J. | 200 | 185 |
| Concurring opinion, Van Valkenburgh, J. | 212 | 198 |
| Dissenting opinion, Kenyon, J. | 217 | 203 |
| Judgment | 219 | 204 |
| Petition for rehearing | 220 | 205 |
| Order denying rehearing | 223 | 207 |
| Motion for stay of mandate | 223 | 208 |
| Order staying mandate | 224 | 208 |
| Clerk's certificate (omitted in printing) | 225 | |
| Order allowing certiorari | 226 | 208 |

[fol. a] [Caption omitted]

[fol. 1] Citation, in usual form, showing service on S. J. Jones et al., filed November 8, 1929, omitted in printing.

---

[fol. 2]

**IN UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF MISSOURI**

6044

UHLMANN GRAIN COMPANY, a Corporation, Plaintiff,

vs.

A. P. DICKSON, Defendant

RECORD ENTRY—Dec. 12, 1924

This day comes plaintiff by its attorneys and files Petition herein.

---

IN UNITED STATES DISTRICT COURT

PETITION ON ACCOUNT—Filed Dec. 12, 1924

Comes now the plaintiff and states that at all times hereinafter mentioned it was and is a corporation organized and existing under the laws of the State of Illinois with its principal office and place of business in Chicago, Cook County, Illinois, and was and is a citizen and resident of said Chicago, Cook County, Illinois; that at all [fol. 3] such times the defendant was and is a citizen and resident of the City of Carrollton, in the Western Division of the Western District of Missouri.

That this is a suit of a civil nature wherein the plaintiff is attempting to recover from the defendant the sum of Thirty-seven Hundred Fourteen & 06/100 ($3,714.06) Dollars as a balance due on account by the defendant to this plaintiff; that the amount in controversy exclusive of interests and costs is more than Three Thousand Dollars; and that this is

a controversy wholly between citizens of different states between whom a several judgment can be had.

For its cause of action against the defendant the plaintiff says that at all times hereinafter mentioned plaintiff was and is engaged in the grain business acting as a grain broker with a place of business in Kansas City, Jackson County, Missouri; that on various dates between April 1, 1924, and November 13, 1924, the defendant employed the plaintiff to purchase and sell wheat and other grains for him on the Chicago and Winnipeg markets, the defendant agreeing to pay the plaintiff a commission on purchases and sales; that pursuant to said employment the plaintiff purchased and sold grain for the defendant as aforesaid, the plaintiff sometimes advancing all or part of the purchase price, for which services and for which advancements the defendant agreed to pay. That during said time an account arose between plaintiff and defendant of mutual credits and debits in the purchase and sale of the grain by plaintiff for the defendants; that the items of said account are hereto attached, marked Exhibit A and made a part of this petition.

That there is now due and owing the plaintiff from the defendant on said account and on account of said services rendered and moneys advanced the sum of Thirty-seven Hundred Fourteen & 06/100 ($3,714.06) Dollars; that plaintiff has duly demanded of defendant the payment of said balance which defendant has always failed and refused to do.

Wherefore, plaintiff prays judgment against the defendant in the full and just sum of Thirty-seven Hundred Fourteen & 06/100 ($3,714.06) Dollars together with the costs and disbursements of this action.

Ryland, Boys, Stinson & Mag, Attorneys for Plaintiff.

[fol. 4] EXHIBIT A TO PETITION

Statement

Kansas City, Mo., Dec. 2, 1924.

A. P. Dickson, c/o Dickson Bros.,

Carrollton, Mo., to Uhlmann Grain Co., Grain Merchants, Dr.

| 1924. | | | | 1924. | | | |
|---|---|---|---|---|---|---|---|
| Apr. | 1. | Ck. Bal..... | 34.39 | Mar. | 31. | P. & S. 2529.... | 16.65 |
| May | 28. | Ck. on acct..... | 200.00 | | " | " 2530.... | 17.74 |
| June | 5. | P. & S. 3248.... | 71.89 | May | 5. | Ck. Margin.... | 150.00 |
| | 25. | " 3529.... | 1,291.94 | | 21. | " " .... | 200.00 |
| | 27. | Ck. on acct..... | 800.00 | June | 5. | P. & S. 3249.... | 378.87 |
| | 26. | P. & S. 3549.... | 63.68 | | 25. | " 3530.... | 1,656.79 |
| July | 29. | " 4131.... | 425.63 | | 26. | " 3550.... | 183.92 |
| Aug. | 18. | " 4412.... | 451.28 | July | 29. | " 4132.... | 680.73 |
| | 20. | " 4440.... | 345.21 | | 31. | Ck. Margin.... | 200.00 |
| | 21. | " 4498.... | 1,213.67 | Aug. | 2. | P. & S. 4216.... | 24.33 |
| | 25. | " 4591.... | 601.28 | | " | " 4217.... | 43.05 |
| | 26. | " 4613.... | 181.90 | | 18. | " 4411.... | 523.63 |
| | 27. | Ck. on acct..... | 850.00 | | 20. | " 4439.... | 535.44 |
| | " | P. & S. 4654.... | 764.28 | | 21. | " 4499.... | 1,098.65 |
| | " | " 4674.... | 6.25 | | 25. | " 4590.... | 909.62 |
| | 30. | " 4766.... | 88.79 | | 26. | " 4612.... | 224.15 |
| Sept. | 2. | " 4831.... | 457.62 | | 27. | " 4653.... | 984.88 |
| | " | " 4832.... | 176.89 | | 30. | " 4767.... | 211.14 |
| | 15. | " 5057.... | 63.64 | Sept. | 2. | " 4833.... | 123.70 |
| Oct. | 18. | " 5466.... | 14,803.00 | | " | " 4834.... | 784.82 |
| Nov. | 3. | " 5687.... | 242.98 | | 15. | " 5058.... | 43.18 |
| | 8. | " 5771.... | 100.60 | | 24. | Ck. Margin.... | 300.00 |
| | 13. | " 5869.... | 1,401.20 | | 29. | " " .... | 500.00 |
| | | | 24,636.12 | Nov. | 3. | P. & S. 5685.... | 3,388.31 |
| | | | | | " | " 5686.... | 872.09 |
| | | | | | 8. | " 5772.... | 2,204.74 |
| | | | | | 13. | " 5870.... | 4,665.63 |
| | | | | | | | 20,922.06 |
| | | | | | | Balance... | 3,714.05* |
| | | | 24,636.12 | | | | 24,636.12 |
| | | Balance.... | 3,714.06 | | | | |

* [*Red in copy.*]

[File endorsement omitted.]

---

IN UNITED STATES DISTRICT COURT

DEFENDANT'S ANSWER AND DEMURRER—Filed April 27, 1925

## Demurrer

Comes now the defendant in the above entitled cause and demurs to plaintiff's petition herein and as grounds of demurrer says:

[fol. 5] First. Said petition does not state facts sufficient to constitute a cause of action against this defendant.

Second. Said petition is indefinite, vague and uncertain, and does not sufficiently inform and advise plaintiff of the cause of action sued on in this case.

Third. The account attached to plaintiff's petition, marked "Exhibit A" and referred to in said petition as an exhibit and as constituting a part of the petition, is not a sufficiently itemized account, is vague, indefinite and uncertain and does not inform and advise defendant of the nature and character of the items of said account, out of what transaction they arose, whether the several amounts claimed are for money advanced to defendant, for merchandise or other commodities.

## Answer

Comes now the defendant in the above entitled cause, by his attorneys, and for his answer to plaintiff's petition herein says that he denies that he is indebted to plaintiff in any sum or amount whatever.

Defendant further states that at all of the times mentioned in plaintiff's petition herein and in the account attached to plaintiff's petition, marked and referred to as "Exhibit A", the plaintiff claimed and pretended to be engaged in the business of dealing in grain and grain futures for itself and as a broker on commission for others on the board of trade in Chicago, Illinois, and Winnipeg, Canada, and speculated and gambled on the rise and fall of the market price of said grain on said boards of trade and throughout the country generally; that said account of the amount claimed in plaintiff's petition against defendant was and is made up of items and amounts which plaintiff claims was due it from defendant as commissions and for money advanced by plaintiff for defendant in making transactions in which plaintiff for itself and as agent for defendant pretended to buy and sell, and went through the form of buying and selling, grain, to-wit wheat, to defendant and for defendant, and for other persons whose names are unknown to defendant at prices fixed and pretended to be fixed by trades and transactions made and offered to be made in said grain on said boards of trade, but in which said transactions there was in fact no actual purchase and no sale or sales of said grain for or on account of defendant or

the persons which plaintiff pretended said persons were dealing with, or for plaintiff itself, and for purchases and sales and pretended purchases and sales and contracts and [fol. 6] agreements for the purchase and sale of said grain on margin and futures, options, puts, calls, spreads and offers without any intention on the part of defendants at the time of said purchases and sales and pretended purchases and sales and the making of said contracts and agreements for the purchases and sales of said grains on margins, futures, puts, calls, spreads and offers of receiving and paying for property so bought or of delivery of property so sold, all of which plaintiff at the time well and truly knew, and all the buying and pretended buying and selling of such grain on margins and optional delivery by plaintiff for itself and for defendant were made by plaintiff when plaintiff knew and the fact was that at the time of such selling and offering to sell by defendants, defendants did not intend to have the full amount of said grain on hand or under their control to deliver upon such sales or pretended sales, and did not intend when buying such grain and offering to buy the same to actually receive the full amount of grain so purchased and pretended to be purchased, and the fact was which plaintiff well and truly knew that defendant was merely gambling on the rise and fall of the market prices of said grain on margins, which enabled them to gamble as aforesaid without expectation and intention of ever receiving or delivering any of such grain or paying for same, but merely to settle the difference by the market price thereof, and by such market prices to determine their losses and profits in such gambling transactions; that for the reasons above stated said claim or account which is sued on in this case is illegal, invalid and in violation of the laws of the state of Missouri.

Further answering, defendant says that plaintiff at said times pretended to be dealing in what is claimed and represented was a spread between the grain markets on the board of trade at Chicago, Illinois, and Winnipeg, in the Dominion of Canada, whereby plaintiff gambled and speculated on the future rise and fall of the grain markets between the said City of Chicago and City of Winnipeg. That is to say that plaintiff sold grain for future delivery on the prices at both markets, and the differences in the price at

the two markets would represent what plaintiff termed and denominated a "spread": that said grain so bought and sold on either of said markets was not bought or sold for actual delivery, and delivery was never intended by either plaintiff or defendant, which fact was well known to plaintiff at the time; that the purchase or sale of grain for future delivery on either or both markets was a mere gambling [fol. 7] transaction, a dealing in futures, margins and options, all of which was well known to plaintiff, and that the same were illegal and void.

Further answering defendant denies each and every allegation in plaintiff's petition contained.

Wherefore, having fully answered, defendant prays to be discharged with his costs.

S. J. & G. C. Jones, Attorneys for Defendant.

[File endorsement omitted.]

---

In United States District Court

Stipulation for Continuance—Filed November 25, 1925

It is hereby stipulated and agreed that the above entitled cause shall be continued to the next term of this court.

Ryland, Boys, Stinson & Mag, Attorneys for Plaintiff. S. J. & G. C. Jones, Attorneys for Defendant.

[File endorsement omitted.]

---

In United States District Court

Stipulation for Continuance—Filed April 29, 1926

It is hereby stipulated and agreed that the above entitled cause shall be continued to the next term of this court.

Ryland, Boys, Stinson & Mag, Attorneys for Plaintiff. S. J. & G. C. Jones, Attorneys for Defendant.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

STIPULATION WAIVING JURY, ETC.—Filed March 27, 1928

Counsel for plaintiff and for defendant in each of the above entitled causes waive trial by jury and consent that the causes may all be consolidated and tried to the court without the intervention of the jury.

Ryland, Boys, Stinson, Mag & Thomson, Attorneys for Plaintiff. S. J. & G. C. Jones, Attorneys for Defendant.

[File endorsement omitted.]

---

[fol. 8] IN UNITED STATES DISTRICT COURT

ORDER CONSOLIDATING CASES NO. 6044, 6045, 6062, 6200, and 6201—Filed March 27, 1928

The written consent of counsel for both parties in each of the above captioned causes having heretofore been filed, consenting to the trial of these causes without a jury and to their consolidation,

It is By The Court Ordered And Adjudged: That these causes be and the same hereby are consolidated for trial, a trial of the issues before a jury is dispensed with and the causes will be tried before the court.

Dated this 27th day of March, 1928.

Albert L. Reeves, Judge.

[File endorsement omitted.]

(The cases referred to in the foregoing Stipulation and Order are No. 6044 Uhlmann Grain Co. vs. A. P. Dickson, No. 645 Uhlmann Grain Co. vs. Joe Dickson, No. 6062 Uhlmann Grain Co. vs. I. N. Calvert, No. 6200 Uhlmann Grain Co. vs. C. T. Dickinson, and No. 6201 Uhlmann Grain Co. vs. Ernest Miller.)

---

IN UNITED STATES DISTRICT COURT

TRIAL, MAY 21, 1928

These consolidated causes coming on regularly for hearing, the parties appearing by their attorneys; defendants are each granted leave to file first amended answer; plain-

tiff refiles replies to answer in each case, and announce ready for trial and waiving trial by jury; thereupon opening statements are made and the matters in issue are submitted to the court for trial, and testimony is introduced on behalf of the plaintiff, and not being concluded at hour of adjournment the hearing is continued until tomorrow morning.

---

### In United States District Court

### First Amended Answer—Filed May 21, 1928

Comes now the defendant in the above entitled cause and for his first amended answer, leave of court first had and obtained, denies that he is indebted to plaintiff in any sum or amount on account of the pretended account filed with the petition herein or any pretended item thereof.

Further answering defendant says that all of the times mentioned in plaintiff's petition herein that plaintiff kept and maintained in the basement of the Florence Hotel [fol. 9] situated at the Northwest corner of the public square in the town of Carrollton, Carroll County, Missouri, a place wherein plaintiff as principal and agent or agent and principal pretended to buy and sell or went through the form of buying and selling for defendant and various other persons grain consisting of wheat, corn, oats and other commodities at prices fixed or pretended to be fixed by trades or transactions made or offered to be made on such grain on various boards of trade, namely; On the boards of Trade of Kansas City, Missouri, Chicago, Illinois, Minneapolis, Monnesota and Winnipeg [of] Canada, but wherein there was in fact no actual purchase and sale or sale and purchase of said grains for or on account of the party or parties thereto, but defendant avers the fact to be that the claim which plaintiff sues defendant for in this cause, if contracted, was illegally contracted at said place so kept, mantained and operated by the plaintiff, and that in none of the transactions or trades, if any which occurred between plaintiff and defendant there was in fact no actual purchase and sale or sale and purchase of grains or other commodities; that all such transactions were wholly fictitious and the buying and selling of such grain was a mere form and pretense.

Further answering defendant states that at all of the times mentioned in plaintiff's petition herein and in the account attached to plaintiff's petition, marked and referred to as "Exhibit A", the plaintiff claimed and pretended to be engaged in the business of dealing in grain and grain futures for itself and as a broker on commission for others on the boards of trade of Chicago, Illinois and Winnipeg, Canada and speculated and gambled on the rise and fall of the market prices of said grain on said boards of trade and throughout the country generally; that said account of the amount claimed in plaintiff's petition against the defendant was and is made up of items and amounts which plaintiff claims was due it from defendant as commission and for money advanced by plaintiff for defendant in making transactions in which plaintiff itself as agent for defendant pretended to buy and sell and went through the form of buying and selling grain, to-wit, wheat, to defendant, and for other persons whose names are unknown to defendant at prices fixed and pretended to be fixed by trades and transactions made and offered to be made in said grain on said boards of trade, but in which said transactions there was in fact no actual purchase and no sale or sales of said grain for or on account of defendant; or the persons which plaintiff pretended said persons were dealing with, or for plaintiff itself, and for [fol. 10] purchases and sale and pretended purchases and sales and contracts and agreements for the purchase and sale of said grains on margin and futures, options, puts, calls, spreads and offers without any intention on the part of the defendants at the time of said purchase and sale and pretended purchases and sale and the making of said contract and agreements for the purchase and sale of said grain on margins, futures, puts, calls, spreads and offers of receiving and paying for property so bought or of delivery of property to be sold, all of which plaintiff at the time well and truly knew, and all of the buying and pretended buying and selling of such grain on margins and optional delivery by plaintiff for itself and for defendant were made by plaintiff when plaintiff well knew and the fact was that at the time of such selling and offering to sell by defendants, defendants did not intend to have the full amounts of said grain on hand or under their control to deliver upon such sales or pretended sales, and did not

intend when buying such grain and offering to buy the same to actually receive the full amount of grain so purchased and pretended to be purchased, and the fact was, which plaintiff well and truly knew, that defendant was merely gambling on the rise and fall of the market prices of said grain or margins, which enabled them to gamble as aforesaid without expectation and intention of ever receiving or delivering any of such grains or paying for the same, but merely to settle the difference by the market price thereof, and by such market prices to determine their losses and profits in such gambling transactions; that for the reasons above stated said claim or account which is sued on in this case is illegal, invalid and in violation of the laws of the State of Missouri.

Further answering, defendant says that plaintiff at said times pretended to be dealing in what is claimed and represented was a spread between the grain markets of the board of trade at Chicago, Illinois, and Winnipeg in the Dominion of Canada, whereby plaintiff gambled and speculated on the future rise and fall of the grain markets between the said city of Chicago and the city of Winnipeg. That is to say that plaintiff sold grain for future delivery on the prices of both markets, and the difference in the price at the two markets would represent what plaintiff termed and denominated a "spread"; that said grain so bought and sold on either of said markets was not bought or sold for actual delivery, and delivery was never intended by either plaintiff or defendant, which fact was well known to plaintiff at the time; that the purchase or sale of grain for future delivery on either or both mar-
[fol. 11] kets was a mere gambling transaction, a dealing in futures, margins and options, all of which was well known to plaintiff, and that the same was illegal and void.

Wherefore, having fully answered, defendant prays to be discharged with his costs.

Lathrop, Crane, Sawyer & Mersereau, S. J. & G. C. Jones, Attorneys for Defendant.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

REPLY OF PLAINTIFF TO DEFENDANT'S FIRST AMENDED ANSWER—Filed May 17, 1928; refiled May 21, 1928

Comes now the plaintiff and for reply to defendant's first amended Answer denies each and every allegation in said first amended answer contained.

Further replying plaintiff states that the obligations herein sued on grew out of and were incurred by defendant and in favor of plaintiff on account of advances by and commissions earned by plaintiff in behalf and for the account of the defendant in transactions in grain involving the purchase and sale thereof for future delivery as commonly conducted on boards of trade by the public generally and known as "futures"; that such transactions were executed and carried out on boards of trade in Chicago, Illinois and Minneapolis, Minnesota in pursuance of and in compliance with the Federal Grain Futures Act by and through the plaintiff who at all such times was a member of such boards of trade and of the Kansas City Board of Trade, each of which boards had been designated by the Secretary of Agriculture as a "contract market". Each of which transactions of purchase or sale being made by the plaintiff in behalf of defendant with another member of such board of trade, and each of which transactions were evidenced by a record in writing showing the date, the parties to such contract, their addresses, the property covered and its price and terms of delivery; that each of said transactions of purchase and sale was executed under the supervision of and with the knowledge and consent of the Grain Futures Administration of the Department of Agriculture in pursuance of the terms of said Grain Futures Act and was and is a transaction in futures which was used by others as a basis for determining the price basis of other transactions in grain in Interstate Commerce and for delivering grain [fol. 12] sold, shipped and/or received in Interstate Commerce for the fulfillment thereof; that the prices involved in each of such transactions were generally quoted and disseminated throughout the United States and in foreign countries as a basis of determining prices to the producer and the consumer of grain and the products and by-products thereof and to facilitate the movement thereof in Interstate

Commerce; and that such transactions or many of them were utilized by shippers, dealers and others engaged in handling grain and the products and by-products thereof in Interstate Commerce as a means of hedging themselves against possible loss.

Wherefore plaintiff prays judgment against the defendant in accordance with the prayer of its petition.

Ryland, Boys, Stinson, Mag & Thomson, Attorneys for Plaintiff.

[File endorsement omitted.]

---

IN UNITED STATES DISTRICT COURT

TRIAL, MAY 22, 1928

Comes now again the above named parties by counsel and the hearing of this cause is resumed and further testimony is introduced on behalf of plaintiff, and plaintiff rests; at the close of plaintiff's evidence the defendants and each of them ask for declaration of law that under the facts and evidence the plaintiff cannot recover, which said request is denied by the court. Testimony is introduced on behalf of defendants, and not being concluded at the hour for adjournment the hearing is continued until tomorrow morning.

---

IN UNITED STATES DISTRICT COURT

TRIAL, MAY 23, 1928

Come now again the parties by their respective counsel and the hearing of this cause is resumed and further testimony is introduced on behalf of the defendants, and defendants rest; plaintiff is permitted to amend each petition for allowance of interest. Defendants ask for peremptory instructions; case taken under advisement on briefs to be lodged with the court.

---

IN UNITED STATES DISTRICT COURT

JUDGMENT—March 8, 1929

In each of the cases above styled the plaintiff requested the Court in writing to make the following findings of fact:

[fol. 13] 1. In all the transactions involved in these suits the plaintiff acted as broker for defendants in the purchase and sale of grain for future delivery, and in no case did plaintiff enter into any other than a brokerage contract with any defendant.

2. Every purchase and sale was executed by plaintiff for defendant on the Grain Exchange in Chicago, Illinois, Minneapolis, Minnesota, or Winnipeg, Manitoba. None of the contracts of purchase or sale involved in these suits was executed in Missouri.

3. Every transaction was a contract of purchase or sale of grain for future delivery, executed on grain exchanges by plaintiff in behalf of defendants on the one side, in which the plaintiff was a clearing member of the exchange where executed and in which the other party to the transaction, either acting for himself or an undisclosed principal, was also a clearing member.

4. Every contract of purchase or sale executed by plaintiff for defendants was carried out in conformity and in compliance with the rules of the particular grain exchange on which it was closed.

5. Every contract executed by plaintiff on behalf of defendants actually called for the purchase or sale of grain for future delivery, and was evidenced by a memorandum in writing under which, and under the customs and rules of the exchanges were executed, the parties were obligated to take or make delivery, or to respond in damages for failure to do so. That under the custom and practice existing and under the rules of the exchanges, offsetting or ringing purchases or sales were permitted in lieu of the actual delivery of grain contracted for.

6. Every transaction involved in these suits initiated by a purchase or sale, was offset by a sale or purchase executed in the same manner as the initiating purchase or sale. Every purchase or sale was closed out by an offsetting transaction before the delivery time arrived and was executed by plaintiff on the orders and at the instruction of defendants, save and except as to some of the last transactions, which were closed out by plaintiff without instruction from such defendant at a time when defendant had no cash margin to protect his transactions.

7. At all the times in question plaintiff was a member in good standing of the grain exchanges on which the contracts of purchase and sale were executed, and plaintiff constantly [fol. 14] maintained a margin with the Clearing House of each Grain Exchange as security for the performance of its contracts. All transactions of purchase and sale executed by plaintiff for defendants were contracted for on the Exchanges in the name of plaintiff, plaintiff was responsible for their performance, and in each instance where the sale price was for an amount less than the purchase price, plaintiff acting as defendants' broker paid the difference to the Clearing House of the Exchange upon which the transactions were carried out. In none of the transactions did plaintiff profit or lose by a loss or profit to defendants. In all of them it acted only as broker for defendants.

8. None of the purchases or sales were executed at Carrollton, Missouri. Orders were given by defendants from time to time at Carrollton to plaintiff's local office for execution on the Grain Exchanges at Chicago, Minneapolis and Winnipeg; but none of these orders were accepted by plaintiff at Carrollton. All of them were telegraphed to Kansas City for acceptance or rejection, and if accepted, were carried out by plaintiff by telegraphic instructions emanating from Kansas City and by written confirmation of the execution of the order, which written confirmations would be mailed from Kansas City to the customer.

9. That no records of the accounts of plaintiff with the defendants were kept at Carrollton; that no moneys were paid out to customers in Carrollton, but remittances were mailed direct by check from Kansas City. All statements, all "P & S's", all confirmations of the execution of purchases and sales, were mailed to defendants from Kansas City. The Carrollton office merely received and transmitted orders of its customers to Kansas City for execution on the Grain Exchanges designated in the customer's order.

10. None of the transactions of purchase and sale executed by plaintiff for defendants was a fictitious transaction. All of them were actually executed between clearing members of the Exchange where consummated, one of whom would be plaintiff acting for defendant.

11. In none of the transactions did plaintiff bet with its customers or take the other side of the deal.

12. In no transactions did plaintiff and defendant settle the gain or loss of defendant other than by ascertaining the actual differences between the price at which the commodity was bought and that at which it was sold. In no transaction of purchase or sale did plaintiff and defendant fix a fictitious [fol. 15] profit or loss to defendant by an ascertainment of the difference between the contract price and the market price on the day fixed for delivery.

13. In each transaction, after an order to sell or purchase was executed by plaintiff, in behalf of defendant, written confirmation thereof was immediately mailed by plaintiff to defendant.

Every written confirmation recited that—

"All transactions made by us for your account contemplates the actual receipt and delivery of the property and payment therefor."

There was no evidence that plaintiff's local agent at Carrollton had any authority to make a different agreement or contract with the defendants other than the apparent authority that may have been conferred upon him by the establishment by plaintiff of the Carrollton office and the putting of its representative in charge thereof.

14. At all the times in question the Chicago and Minneapolis Boards of Trade had been designated by the Secretary of Agriculture of the United States as Contract Markets. At all such times the written records and written reports required by the Grain Futures Act and the rules and regulations of the Department of Agriculture were made by the plaintiff and the other clearing member to the transaction, and the contracts of purchase and/or sale were executed with the formalities required by the Grain Futures Act and the Grain Futures Administration of the Department of Agriculture.

15. In every contract entered into by plaintiff in behalf of defendants, plaintiff was legally obligated to perform the written terms thereof, and every such contract was actually executed and was evidenced by a written memorandum entered into between the clearing members of the Exchange in whose name the contracts were executed. Under the rules of all of the Exchanges on which the con-

tracts of purchase and sale were executed, the agreements were required to be made in the names of clearing members who were held responsible for their performance. None of the contracts of purchase and/or sale under the rules of these Exchanges could have been entered into in the names of defendants. In each of such transactions however the defendants were the undisclosed principal of plaintiff acting for them.

[fol. 16] 16. If defendants had no intention of accepting or making delivery of the grain called for by the contracts in question, plaintiff had no knowledge of such fact and did not participate in the intention.

17. There was no evidence that the other party to the contracts entered into between plaintiff acting for defendants and such other party, either intended not to take or make delivery, or intended to perform the contract by a mere settlement of the difference between contract and market prices on the date fixed for delivery; or that such other parties to the transactions of purchase and sale intended mere fictitious or pretended transactions.

Each of which requests for findings the Court refused to give, to which action of the Court in the refusing of each of said requested findings of fact, the plaintiff separately and severally at the time excepted.

And now the Court of its own motion makes the following findings of fact in each of the above styled cases:

1. In all of the transactions involved in these suits the plaintiff purported to act as broker for defendants in the purchase and sale of grain for future delivery, and in no case did plaintiff pretend to enter into any other than a brokerage contract with any defendant.

2. Every pretended purchase and pretended sale was executed by plaintiff for defendant on the Grain Exchange in Chicago, Illinois, Minneapolis, Minnesota, or Winnipeg, Manitoba. None of the contracts of purchase or sale involved in these suits purported to have been executed in Missouri.

3. Every transaction was a pretended contract of purchase or sale of grain for future delivery, purported to

have been executed on grain exchanges by plaintiff in behalf of defendants on the one side, in which the plaintiff was a clearing member of the exchange where executed and in which the purported other party to the transaction, either acting for himself or a pretended undisclosed principal, was also a clearing member.

4. Every pretended contract of purchase or sale executed by plaintiff for defendants was purported to have been carried out in conformity and in compliance with the rules of the particular grain exchange on which it was pretended to have been closed.

5. Every contract purported to have been executed by plaintiff on behalf of defendants pretended to call for the [fol. 17] purchase or sale of grain for future delivery and was evidenced by a memorandum in writing under which, and under the customs and rules of the exchanges were executed, the parties were obligated in form and pretense to take or make delivery, or to respond in damages for failure to do so. That under the customs and practice existing and under the rules of the exchanges, off-setting or ringing purchases or sales under proper circumstances, in good faith, were permitted in lieu of the actual delivery of grain contracted for.

6. Every transaction involved in these suits initiated by a purported purchase or sale, was offset by a pretended sale or pretended purchase executed in the same manner as the initiating purported purchase or sale. Every pretended purchase or sale was closed out by a purported offsetting transaction before the delivery time arrived and was purported to have been executed by plaintiff on the orders and at the instruction of defendants, save and except as to some of the last transactions, which were closed out by plaintiff without instruction from such defendant at a time when defendant had no cash margin to protect his transactions.

7. At all the times in question plaintiff was a member in good standing of the grain exchanges on which the pretended contracts of purchase and sale were executed, and plaintiff constantly maintained a margin with the Clearing House of each Grain Exchange as security for the performance of its bona fide contracts. All transactions of pre-

tended purchase and pretended sale executed by plaintiff for defendants were purported to have been contracted for on the Exchanges in the name of plaintiff.

8. None of the pretended purchases or sales were purported to have been executed at Carrollton, Missouri. Orders were pretended to have been given by defendants from time to time at Carrollton to plaintiff's local office for purported execution on the Grain Exchanges at Chicago, Minneapolis and Winnipeg; but none of these orders were purported to have been accepted by plaintiff at Carrollton. All of them were telegraphed to Kansas City for acceptance or rejection, and if accepted, were purported to have been carried out by plaintiff by telegraphic instructions emanating from Kansas City and by pretended written confirmation of the execution of the order, which pretended written confirmations would be mailed from Kansas City to the customer.

[fol. 18] 9. That no records of the accounts of plaintiff with the defendants were kept at Carrollton; that no moneys were paid out to customers in Carrollton, but remittances were mailed direct by check from Kansas City. All statements, all pretended "P & S's", all pretended confirmations of the purported execution of purchases and sales, were mailed to defendants from Kansas City. The Carrollton office merely pretended to receive and transmit purported orders of its customers to Kansas City for pretended execution on the Grain Exchanges designated in the customer's pretended order.

10. All of the transactions of purchase and sale executed by plaintiff for defendants were fictitious transactions. None of them were actually executed between clearing members of the Exchange where pretended to have been consummated.

11. In all of the transactions plaintiff bet with its customers and took the other side of the deal.

12. In each transaction, after a pretended order to sell or purchase was purported to have been executed by plaintiff in behalf of defendant, written confirmation thereof was immediately mailed by plaintiff to defendant. Every written confirmation recited that—

"All transactions made by us for your account contemplate the actual receipt and delivery of the property and payment therefor."

To which action of the Court in making each of the findings of fact so found, plaintiff (and also defendants) as to each separate finding and in each separate case, excepted at the time and still except.

Wherefore, these cases having been submitted to the Court upon the pleadings and the evidence, and upon the requests for findings of fact by the plaintiff, and the Court having duly considered the evidence, the briefs and the arguments of counsel for the respective parties, and being fully advised in the premises does find, that the parties hereto by stipulation in writing herein filed in form and manner as provided by statute, have waived a trial by jury and have agreed that these cases may be consolidated together and that the issues therein might be heard and determined by the Court without the aid of a jury.

The Court finds the issues in each of the cases above enumerated in favor of the defendants and finds that the plaintiff is not entitled to recover in any of these actions.

[fol. 19] Wherefore it is Considered, Ordered and Adjudged that plaintiff take nothing by its suit as to each and any of said cases and that defendant in each of said causes so consolidated, have and recover of plaintiff his costs herein expended.

Albert L. Reeves, Judge.

[File endorsement omitted.]

---

IN UNITED STATES DISTRICT COURT

MOTION FOR NEW TRIAL—Filed March 9, 1929

Comes now the plaintiff and in each of the above entitled consolidated cases moves the Court to set aside each and every judgment, and to set aside each and every finding of fact in each and every of said causes so consolidated, and for grounds of this motion this plaintiff states.

1. The Court erred in admitting, over the objection and exception of plaintiff, incompetent, irrelevant and immaterial testimony in behalf of the defendant.

2. The Court erred, over the objection and exception of this plaintiff, in refusing to admit competent, relevant and material testimony offered in behalf of the plaintiff.

3. The judgment of the Court and each and every of the findings of fact made by the Court in each of said causes was against the evidence, the greater weight thereof, and was wholly unsupported by any evidence.

4. The Court erred in refusing each and every of the requested findings of fact filed by plaintiff.

5. The judgment of the Court should have been in favor of the plaintiff in each case, instead of in favor of defendant.

6. The judgment of the Court in each case was wholly unsupported by any testimony.

7. Under the undisputed evidence, the judgment of the Court should have been for plaintiff.

8. The Plaintiff was entitled to a judgment in its favor in each case as a matter of law.

Ryland, Boys, Stinson, Mag, & Thomson, Attorneys for Plaintiff.

[File endorsement omitted.]

---

[fol. 20] IN UNITED STATES DISTRICT COURT

PETITION FOR APPEAL AND ALLOWANCE THEREOF—Filed Nov. 8, 1929

To the Honorable Albert L. Reeves, District Judge:

The above named plaintiff, Uhlmann Grain Company, in each of the above entitled consolidated causes, feeling aggrieved by the judgment rendered and entered in each of said causes so consolidated on the 9th day of March, 1929, and feeling aggrieved by the action of the court in overruling motions for a new trial on the 6th day of November, 1929, does hereby appeal from said judgments and from said orders to the Circuit Court of Appeals for the Eighth Circuit, for the reasons set forth in the Assignment of Errors filed herewith, and prays that these appeals be allowed and

that citations be issued as provided by law and that a transcript of the record, proceedings and documents upon which said judgments were based, duly authenticated, be sent to the United States Circuit Court of Appeals for the Eighth Circuit under the rules of such court in such cases made and provided.

Uhlmann Grain Company, Plaintiff, by Ryland, Boys, Stinson, Mag & Thomson, Its Attorneys.

Allowed this 8th day of November, 1929.

Albert L. Reeves.

[File endorsement omitted.]

---

In United States District Court

Assignment of Errors—Filed Nov. 8, 1929.

And now comes the above named plaintiff, Uhlmann Grain Company, appellant herein, by its attorneys of record, and assigns as errors upon which it intends to rely, the following errors as having intervened in the record, proceedings and judgment of the United States District Court in each of the above entitled consolidated causes, that is to say:

1. The court erred in refusing, (over the objections and exceptions of plaintiff) to find as facts the matters and things set forth in each, every and all of requests for findings of fact of plaintiff, numbered 1 to 17, both inclusive.

2. The court erred in finding as facts (over the objections and exceptions of plaintiff) each, every and all of the matters and things found by it in its findings of fact numbered 1 to 12, both inclusive.

[fols. 21 & 22] 3. The court erred in entering up judgment for the defendants in each of the above entitled consolidated cases.

4. In each of said consolidated cases the judgment of the court under the undisputed evidence should have been for plaintiff and the court erred in not rendering judgment for plaintiff in each of said causes.

5. There was no evidence in the record to support the judgments in favor of defendant in either or any of said consolidated causes.

6. The court erred in overruling plaintiff's motion for a new trial in each of said causes.

7. The court erred in permitting defendants, (over the objections and exceptions of plaintiff) to introduce evidence of alleged conversations between plaintiff's local manager, McDonough, and various of the defendants.

Ryland, Boys, Stinson, Mag & Thomson, Attorneys for Plaintiff.

[File endorsement omitted.]

---

In United States District Court

Order Fixing Appeal Bond—Filed Nov. 8, 1929

Considering the application for appeal this day presented in the above consolidated causes, it is ordered that the amount of the appeal bond be and it is hereby fixed at the sum of $250.00 said bond to be executed by at least two sureties, if the sureties are individuals, and if the bond is executed by a corporate surety company authorized to do business in the State of Missouri, then that one surety be sufficient; said appeal bond to be approved by the Clerk of the District Court of the United States for the Western Division of the Western District of Missouri, or by any of his deputies.

Albert L. Reeves, Judge.

[File endorsement omitted.]

---

Bond on appeal for $250.00, approved and filed November 25, 1929, omitted in printing.

---

[fol. 23] In United States District Court

Order—Filed Dec. 7, 1929, extending time to file transcript

For good cause shown, it is hereby ordered that the time for filing the transcript of the record upon appeal in the

above entitled causes in the United States Circuit Court of Appeals for the 8th Circuit be extended to on or before the 7th day of January, 1930.

Dated Kansas City, Missouri, December 7, 1929.

Merrill E. Otis, Judge, in the absence of Judge Albert L. Reeves from the Western Division.

Service of a copy of the within order is hereby acknowledged this 7th day of December, 1929.

Lathrop, Crane, Reynolds, Sawyer & Mersereau, Attorneys for Defendants.

[File endorsement omitted.]

---

IN UNITED STATES DISTRICT COURT

ELECTION AS TO PRINTING OF RECORD—Filed Dec. 23, 1929

Comes now the plaintiff herein and elects to have the record on appeal in the above entitled cause printed under [fol. 24] the supervision of the Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

Ryland, Boys, Stinson, Mag & Thomson, Attorneys for Plaintiff.

---

IN UNITED STATES DISTRICT COURT

ORDER—Filed Jan. 7, 1930, further extending time to file transcript

For good cause shown, it is hereby ordered that the time for filing the transcript of the record upon appeal in the above entitled causes in the United States Circuit Court of Appeals for the Eighth Circuit be extended to on or before the 7th day of February, 1930.

Dated this 7th day of January, 1930, at Kansas City, Mo.

Albert L. Reeves, Judge.

Service of a copy of the within order is hereby acknowledged this 7th day of January, 1930.

Lathrop, Crane, Reynolds, Sawyer & Mersereau, Attorneys for Defendants.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

ORDER—Filed Feb. 7, 1930, further extending time to file transcript

For good cause shown, it is hereby ordered that the time for filing the transcript of the record upon appeal in the above entitled cause in the United States Circuit Court of Appeals for the Eighth Circuit, be extended to on or before the 7th day of March, 1930.

Dated this 7th day of February, 1930, at Kansas City, Mo.

Albert L. Reeves, Judge.

Service of a copy of the within order is hereby acknowledged this 6th day of February, 1930.

Lathrop, Crane, Reynolds, Sawyer & Mersereau, Attorneys for Defendants.

[File endorsement omitted.]

---

[fol. 25] IN UNITED STATES DISTRICT COURT

ORDER—Filed Mch. 6, 1930, further extending time to file transcript

For good cause shown, it is hereby ordered that the time for filing the transcript of the record upon appeal in the above entitled causes in the United States Circuit Court of Appeals for the Eighth Circuit be extended to on or before the 7th day of April, 1930.

Dated this 6th day of March, 1930, at Kansas City, Mo.

Albert L. Reeves, Judge.

Service of a copy of the within order is hereby acknowledged this 5th day of March, 1930.

Lathrop, Crane, Reynolds, Sawyer & Mersereau, Attorneys for Defendants.

[File endorsement omitted.]

---

IN UNITED STATES DISTRICT COURT

ORDER—Filed Apr. 4, 1930, further extending time to file transcript

For good cause shown, it is hereby ordered that the time for filing the transcript of the record upon appeal in the

above entitled causes in the United States Circuit Court of Appeals for the Eighth Circuit be extended to on or before the 7th day of May, 1930.

Dated this 4th day of April, 1930, at Kansas City, Mo.

Albert L. Reeves, Judge.

Service of a copy of the within order is hereby acknowledged this 4th day of April, 1930.

Lathrop, Crane, Reynolds, Sawyer & Mersereau, Attorneys for Defendants.

[File endorsement omitted.]

---

IN UNITED STATES DISTRICT COURT

ORDER, NOV. 6, 1929, OVERRULING MOTION FOR NEW TRIAL

This day come the parties by their attorneys and plaintiff's motion for new trial is heard and overruled by the Court.

[fol. 26] Dated this 6th day of November, 1929, at Kansas City, Mo.

Albert L. Reeves, Judge.

Filed in the United States District Court Apr. 25, 1930.

---

IN UNITED STATES DISTRICT COURT

ORDER, APR. 24, 1930, ENLARGING TIME TO FILE BILL OF EXCEPTIONS—Filed April 25, 1930

This day came plaintiff and made application for an order extending the time for signing, allowance and filing of the Bill of Exceptions herein, and cause being shown therefor, such application is granted, and the time for signing, allowance and filing of the bill of exceptions of the above named plaintiff, is extended from the last day of the present term of court to the last day of the April term of court, 1930.

Dated April 24, 1930.

Albert L. Reeves, Judge.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

ORDER—Filed May 7, 1930, further extending time to file transcript

For good cause shown, it is hereby ordered that the time for filing the transcript of the record upon appeal in the above entitled causes in the United States Circuit Court of Appeals for the Eighth Circuit be extended to on or before the 7th day of June, 1930.

Dated this 7th day of May, 1930, at Kansas City, Missouri.

Albert L. Reeves, Judge.

Service of a copy of the within order is hereby acknowledged this 6 day of May, 1930.

Lathrop, Crane, Reynolds, Sawyer & Mersereau, Attorneys for Defendants.

[File endorsement omitted.]

---

IN UNITED STATES DISTRICT COURT

ORDER—Filed June 6, 1930, further extending time to file transcript

For good cause shown, it is hereby ordered that the time for filing the transcript of the record upon appeal in the above entitled causes in the United States Circuit Court of [fol. 27] Appeals for the Eighth Circuit be extended to on or before the 7th day of July, 1930.

Dated this 6th day of June, 1930, at Kansas City, Missouri.

Merrill E. Otis, Judge, in the absence of Judge Reeves from Kansas City.

Service of a copy of the within order is hereby acknowledged this — day of June, 1930.

—— ——, Attorneys for the Defendants.

[File endorsement omitted.]

In United States District Court

Order—Filed July 7, 1930, further extending time to file transcript

For good cause shown, it is hereby ordered that the time for filing the transcript of the record upon appeal in the above entitled causes in the United States Circuit Court of Appeals for the Eighth Circuit be extended to on or before the Seventh day of September, 1930.

Dated this Seventh day of July, 1930, at Kansas City, Missouri.

Albert L. Reeves, Judge.

Service of a copy of the within order is hereby acknowledged this — day of July, 1930.

——— ———, Attorneys for Defendants.

[File endorsement omitted.]

---

In United States District Court

Order—Filed Sept. 6, 1930, further extending time to file transcript

For good cause shown, it is hereby ordered that the time for filing the transcript of the record upon appeal in the above entitled causes in the United States Circuit Court of Appeals for the Eighth Circuit be extended to on or before the 7th day of November, 1930.

[fol. 28] Dated this 6th day of September, 1930, at Kansas City, Missouri.

Albert L. Reeves, Judge.

[File endorsement omitted.]

---

In United States District Court

Order—Filed Nov. 1, 1930, further extending time to file bill of exceptions

This day came plaintiff and made application for an order extending the time for signing, allowance and filing of the

Bill of Exceptions herein, and cause being shown therefor, such application is granted, and the time for signing, allowance and filing of the bill of exceptions of the above named plaintiff, is extended from the last day of the present term of court to the 15th day of November, 1930.

Dated November 1st, 1930.

Merrill E. Otis, Judge.

[File endorsement omitted.]

---

In United States District Court

Order—Filed Nov. 6, 1930, further extending time to file transcript

For good cause shown, it is hereby ordered that the time for filing the transcript of the record upon appeal in the above entitled causes in the United States Circuit Court of Appeals for the Eighth Circuit be extended to on or before the 7th day of January, 1931.

Dated this 6th day of November, 1930, at Kansas City, Missouri.

Albert L. Reeves, Judge.

[File endorsement omitted.]

---

In United States District Court for the Western Division of the Western District of Missouri

No. 6044

Uhlmann Grain Company, Plaintiff,

vs.

A. P. Dickson, Defendant

[fol. 29]

No. 6045

Uhlmann Grain Company, Plaintiff,

vs.

Joe Dickson, Defendant

No. 6062

UHLMANN GRAIN COMPANY, Plaintiff,

vs.

I. N. CALVERT, Defendant

No. 6200

UHLMANN GRAIN COMPANY, Plaintiff,

vs.

C. T. DICKINSON, Defendant

No. 6201

UHLMANN GRAIN COMPANY, Plaintiff,

vs.

ERNEST MILLER, Defendant

Bill of Exceptions—Filed Nov. 6, 1930

CAPTION

Be it remembered that on May 21, 1928, the above entitled cause coming on for hearing before Honorable Albert L. Reeves, Judge of the United States District Court for the Western Division of the Western District of Missouri, plaintiff appearing by its attorneys, Mr. Paul R. Stinson and Mr. Carl L. Crocker, of the firm of Ryland, Boys, Stinson, Mag & Thomson, Kansas City, Missouri; and the defendants appearing by their attorneys, Mr. S. J. Jones and Mr. G. C. Jones, of Carrollton, Missouri, and Mr. R. S. Righter, of the firm of Lathrop, Crane, Reynolds, Sawyer & Mersereau, Kansas City, Missouri; the following proceedings were had and entered of record in said cause, to-wit:

At the opening of the trial, counsel for plaintiff and defendants stipulated in open Court that the testimony taken was offered in all of the cases; that that testimony material only to a particular case would be treated as applying to that case only; that where material to all of the cases it will be understood as applying to each and every one of them. Before any evidence was given, defendants, I. N.

Calvert, Joe Dickson, and A. P. Dickson, objected to the introduction of any evidence in the case as to them, for the reason that the petition fails to state a cause of action against them. The objections were overruled, each defendant excepting at the time.

PLAINTIFF'S EVIDENCE

O. W. ROWE testified for plaintiff:

I am associated with plaintiff in this case. I was in 1924. Plaintiff had an office in Kansas City, Missouri, in 1924. I was in the office then and still am. I am Chief Clerk. In 1924 and now the Uhlmann Grain Company was in the grain business, operating a large elevator, doing a cash [fol. 30] grain business, and also handling grain futures. In 1924 Uhlmann Grain Company was a member of Kansas City Board of Trade, Minneapolis Chamber of Commerce, and Winnipeg Grain Exchange. It was also a member of Grain Clearing Corporation of Kansas City in 1924. It was also a member of Chicago Grain Clearing Corporation. I had charge of the records in the Kansas City office. In 1924 the plaintiff had an office in Carrollton, Missouri. Mr. McDonough was operating the office in Carrollton.

In 1924 each of the defendants had accounts with us, and had had transactions on our books. The deals consisted of trades made for their accounts and on futures on the different grain exchanges and afterwards they were closed out. There was a private telegraph wire which we had between Kansas City and Carrollton. Orders came by telegraph over this private wire from Carrollton to Kansas City. When an order came it was relayed on to Chicago, if the order was for a Chicago market. We had a private wire between Kansas City and Chicago and these orders were telegraphed to Chicago over that wire. The bookkeeping entries and records of these transactions which were telegraphed to Kansas City from Carrollton were kept in the office at Kansas City under my supervision. No books and no bookkeeping entries were made in Carrollton, showing the accounts between the Uhlmann Grain Company and the people who sent these orders in. When statements were rendered with relation to these transactions with these defendants they were mailed from the Kansas City office,

in most cases directly to the customres. In connection with these transactions checks would be sent to these defendants when they were closed. The checks were drawn in Kansas City on banks in Kansas City. In no instance were checks drawn on banks in Carrollton, Missouri. McDonough never drew any checks himself.

Plaintiff did have bank accounts in two banks in Carrollton at that time. Money and checks collected by McDonough at Carrollton would be deposited in the Carrollton banks. McDonough would get a duplicate deposit slip and send it to us here in Kansas City, and we would make the entries on our books. McDonough kept no record of these deposits to my knowledge. McDonough never drew checks on these Carrollton banks. They were drawn by the Uhlmann Grain Company at Kansas City.

Orders from Carrollton were handled in this way: Orders received at Kansas City would be telegraphed to Chicago. [fol. 31] When it was executed, we would get a wire. We got an execution of the trade after the trade had been made on the Chicago Board of Trade.

Plaintiff's Exhibit 1 (offered and received in evidence), was a private wire of Uhlmann Grain Company. Interpreted it said:

PLAINTIFF'S EXHIBIT 1

"Bought ten Minneapolis wheat one sixty-two and a half, sold ten Chicago May wheat at sixty-five and a half."

It means a trade has been made whereby the Chicago office has bought ten Minneapolis May wheat at one sixty-two and a half and sold ten May wheat at one sixty-five and a half for C. N. 76. C. N. means Carrollton and—that is a code—and 76 is the account number. That is to say, 76 is the number of one of the Carrollton accounts. In handling these transactions we give each account a number instead of a name. Fully interpreted the telegram means that Chicago has executed an order relayed from Kansas City to Chicago for the purchase of 10,000 bushels of wheat at Winnipeg and the sale of 10,000 bushels of wheat at Chicago for the account of No. 76. The telegrams also disclosed that our broker in Minneapolis bought 10,000 bushels of May wheat at one sixty-two and a half for the

account of the Uhlmann Grain Company, and Chicago sold 10,000 bushels of May wheat at one sixty-five and a half for the account of the Uhlmann Grain Company at Kansas City. In the ordinary course of events, after we got a telegram of that kind, we confirmed these trades and gave the Carrollton customer an exact copy of what we had done for his account.

When an account first starts, we, of course, designate the customer by name. Later we give him a number. That is done to facilitate the handling of messages back and forth, and to save time and space.

Plaintiff's Exhibit 2 is a confirmation of a trade executed on the Chicago Board of Trade for the account of S. P. Dickson, one of our Carrollton customers.

This is a typical confirmation which would be sent to the customer at Carrollton after we received a telegram containing the information in plaintiff's Exhibit 1. Ordinarily it would be sent to the customer direct. Sometimes to our Carrollton office, depending upon the instructions of the customer. Separate confirmations were sent on each bought and each sold transaction. The bought confirmation would be "Bought ten Minneapolis May wheat [fol. 32] at one sixty-two and a half"; the sold confirmation would be "Sold ten Chicago May wheat at one sixty-five and a half."

The confirmation would not disclose the name either of the broker or the person with whom the Uhlmann Grain Company dealt for the customer, if the transaction was on a foreign market, that is to say, Chicago, Minneapolis, or Winnipeg.

All orders received in Kansas City we retain copies of. They were also entered in our books. The trades as made are entered in the ledger. The confirmation did not disclose the name of the person with whom Uhlmann Grain Company in Chicago or Minneapolis or Winnipeg dealt. The record of the other party to the contract is not kept in Kansas City if the trade is executed in Chicago or some place besides Kansas City.

(Plaintiff's Exhibit 2 was received in evidence and is in words and figures as follows:

PLAINTIFF'S EXHIBIT 2

"No. 534

Uhlmann Grain Company, 338 Board of Trade

Fred Uhlmann, President; Paul Uhlmann, Vice-President; Richard Uhlmann, Sec'y & Treas.

Cn. 17. Kansas City, Mo., 6/26, 192-.

S. P. Dickinson,
Tina, Mo.:

We have this day bought for your account, at Chicago, Ill.

All transactions made by us for your account contemplate the actual receipt and delivery of the property and payment therefor. We reserve the right to close these transactions when deposits are running out, without giving further notice. We also reserve the privilege of clearing all transactions through Clearing Associations, if there be any, from day to day in accordance with the usage, rules or regulations of the Exchange where the trade is made, prevailing at the time. All purchases and sales made by us for you are made in accordance with and subject to the rules, regulations and customs of the Chamber of Commerce or Board of Trade where the trades are made, and the rules, regulations and requirements of its Board of Directors, and all amendments that may be made thereto. [fols. 33 & 34] This contract is made under authority of the Act of Congress known as "The Future Trading Act."

| Quantity | Delivery | Article | Price | Bought | D of | Address |
|---|---|---|---|---|---|---|
| 10 | S. | W. | 117'8 | Chgo. | .... | ..... |

We do not consider orders open from one day to next, unless by special instructions.

Uhlmann Grain Company, by (Signed) D.

E. O. E."

Assuming that this is an order to purchase 10,000 bushels of Chicago May wheat, Uhlmann Grain Company would make a trade with another broker—with some

broker in the pit there, some other member of the Chicago Board of Trade. No transactions are handled on either the Grain Exchanges in Chicago or Minneapolis or in Kansas City except by members of the Exchange, and with members of the Exchange.

(On motion of counsel for defendants that the testimony of this witness that these deals on the Chicago and Minneapolis Exchanges were had only with members, the testimony was stricken out, plaintiff at the time excepting.)

Plaintiff's Exhibit 3 is the account between Uhlmann Grain Company and A. P. Dickson. The transactions shown by this record cover the period between April 1, 1924, and November 13, 1924. The records were made in our office under my supervision. It is the ledger sheet of plaintiff, and it shows the balance due plaintiff.

(Plaintiff's Exhibit 3, offered and received in evidence, is in words and figures as follows:

(Here follows Plaintiff's Exhibit 3, side folios 35 and 36)

PLAINTIFF'S EXHIBIT NO. 3

Pl. E. Page 1 No 1 SHEET NO. ACCT NO. 6774 30

NAME A. P. Dickson 72

ADDRESS % Dickson Bros Carrollton Mo

| DATE 1927 | | ITEMS | FOL | DEBITS | DATE 1927 | | ITEMS | FOL | CREDITS |
|---|---|---|---|---|---|---|---|---|---|
| Apr | 1 | ck Bal | 937 | 34 39 | Mar | 31 | Bals | 3529 | 958 | 16 65 |
| May | 28 | " amt | 975 | 200 00 | | | | 3530 | | 17 74 |
| June | 5 | Bals | 3248 | 980 | May | 5 | ck | mgn | 959 | 150 00 |
| | 25 | ✓ | 3524 | 988 | | 21 | ✓ | ✓ | 971 | 200 00 |
| | 27 | ck amt | | 994 | June | 5 | Bals | 3249 | 980 | 375 87 |
| | 26 | Bals | 3504 | 989 | | 25 | ✓ | 3530 | 988 | 16 56 79 |
| July | 29 | ✓ | 4131 | 3108 | | 26 | ✓ | 3550 | 987 | 13 37 |
| Aug | 18 | ✓ | 4412 | 3118 | July | 24 | ✓ | 4132 | 3108 | 6 80 |
| | 20 | ✓ | 4440 | 3119 | | 31 | ck | mgn | 9132 | 200 00 |
| | 21 | ✓ | 4448 | 3121 | Aug | 2 | Bals | 4216 | 3111 | 24 33 |
| | 23 | ✓ | 4591 | 3124 | | | ✓ | 4217 | | 430 |
| | 26 | ✓ | 4613 | 3125 | | 18 | ✓ | 4411 | 3118 | 53 |
| | 27 | ck amt | | 3174 | | 20 | ✓ | 4439 | 3119 | 53 |
| | ✓ | Bals | 4650 | 3126 | | 21 | ✓ | 4497 | 3121 | 16 98 |
| | 27 | ✓ | 4674 | 3128 | | 23 | ✓ | 4590 | 3124 | 70 |
| | 30 | ✓ | 4766 | 3129 | | 24 | ✓ | 4612 | 3125 | 22 |
| Sep | 2 | ✓ | 4831 | 3132 | | 27 | ✓ | 4653 | 3126 | 93 |
| | ✓ | ✓ | 4832 | ✓ | | 30 | ✓ | 4767 | 3129 | 211 |
| | 15 | ✓ | 5057 | 3134 | Sep | 2 | ✓ | 4833 | 3132 | 123 |
| Oct | 18 | ✓ | coll | 3141 | | ✓ | ✓ | 4894 | | 784 |
| Nov | 3 | ✓ | 5687 | 3 2 | | 15 | ✓ | 5058 | 3134 | 42 |
| | 8 | ✓ | 5771 | 3 4 | | 24 | ck | mgn | 3218 | 300 |
| | 13 | ✓ | 5869 | 3 7 | | 29 | ✓ | ✓ | 3223 | 500 |
| | | | | | Nov | 3 | Bals | 5685 | 31 | 3388 |
| | | | | | | ✓ | ✓ | 5686 | ✓ | 872 |
| | | | | | | 8 | ✓ | 5772 | 34 | 2204 |
| | | | | | | 13 | ✓ | 5870 | 37 | 4656 |
| | | | | | Clear | 6 | Effects Suspense | | 354 | 3714 |

13160 Oct

6978 Nov

2714

1850 Bank
1310 Bank Bill
540 -

[fols. 37 & 38] (Defendants objected to the offer of this exhibit for the reason that it does not contain a statement of the items or what the subject of the charges were, and is unintelligible; for the further reason that no itemized account was filed with the petition as the law requires, and the further ground that the Exhibit does not tend to prove the account sued on and is incompetent for any purpose under the pleadings; for the further reason that it was not shown that this account is an original entry.

The Witness: This is the original record that was made at the time the transactions occurred.

The Exhibit was admitted by the Court for the purpose of showing the debits and credits and state of the account between plaintiff and defendant, A. P. Dickson (defendant duly excepting at the time.)

This account shows that on November 13, there was a balance due Uhlmann Grain Company of $3,714.06. We made several demands on Mr. Dickson at or about the time this account became due. Nothing has ever been paid on it. Figuring interest at 6%, including today, the 21st of May, which amounts to $795.42, it makes the total amount due, $4,509.48.

Plaintiff's Exhibits 4, 5, 6, and 7 are ledger sheets of the plaintiff showing the accounts with the other defendants. They are original ledger accounts showing debits and credits. These records were made under my supervision at the time, and reflect the state of the account between Uhlmann Grain Company and each of these defendants for the period which they purport to cover.

(These Exhibits were offered in evidence. Defendants make the same objection to the offer of these Exhibits as was made to plaintiff's Exhibit 3, the objection was overruled, the Exhibits admitted in evidence, defendants at the time excepting.)

Said Exhibits are in words and figures as follows:

PLAINTIFF'S EXHIBIT NO. 4

P Ex 4 Atl

SHEET NO

ACCT NO 6477 2 2

NAME Joe Dickson

ADDRESS % Dickson Bros Carrollton Mo

77

| 1926 | | ITEMS | FOL. | DEBITS | 1926 | | ITEMS | FOL. | CREDITS |
|---|---|---|---|---|---|---|---|---|---|
| Mar | 17 | Bals | 2332 | 931 | | 193 82 | Mar | 17 | Bals 2331 | 98 | | 385 28 |
| | 25 | ✓ | 2891 | 955 | | 91 78 | | 23 | " 2492 | 955 | | 161 44 |
| | 16 | ✓ | 2450 | | | 50 14 | | 26 | ✓ 2449 | ✓ | | 12 57 72 |
| Apr | 7 | Ck on Pc | | 941 | | 300 00 | | 31 | ✓ 2527 | 98 | | 21 84 |
| June | 5 | Bals | 3250 | 980 | | 179 59 | | ✓ | ✓ 2878 | | | 23 56 |
| | 27 | ✓ | 3436 | 986 | | 87 74 | May | 5 | Ck mgn | 959 | | 146 00 |
| | 24 | Ck on Pc | | 992 | | 300 00 | June | 5 | Bals 3250 | 980 | | 320 00 |
| | 28 | Bals | 3655 | 992 | | 460 | | 27 | ✓ 3437 | 986 | | 134 84 |
| July | 29 | ✓ | 4127 | 908 | | 532 46 | | 29 | ✓ 3656 | 992 | | 233 75 |
| Aug | 8 | ✓ | 4408 | 918 | | 476 28 | July | 29 | " 4128 | 908 | | 177 37 |
| | 19 | ✓ | 4420 | 919 | | 1251 16 | | 31 | Ck mgn | 913 | | 220 00 |
| | 21 | ✓ | 4508 | 921 | | 1289 55 | Aug | 2 | Bals 4218 | 911 | | 30 58 |
| | 25 | ✓ | 4601 | 9120 | | 476 29 | | ✓ | ✓ 4219 | | | 430 57 |
| | 26 | ✓ | 4626 | 9122 | | 107 15 | | 18 | ✓ 4407 | 5918 | | 556 13 |
| | 27 | ✓ | 4656 | 9126 | | 600 55 | | 19 | ✓ 4435 | 919 | | 1133 65 |
| | " | ✓ | 4709 | 9127 | | 456 71 | | 21 | ✓ 4509 | 922 | | 1158 95 |
| | 30 | " | 4762 | 9129 | | 376 29 | | 25 | " 4600 | 926 | | 291 55 |
| Sep | 4 | Ck on Pc | | 9183 | | 1200 00 | | 26 | ✓ 4675 | 9175 | | 206 36 |
| | 3 | Bals | 4862 | 9132 | | 339 36 | | 27 | " 4655 | 9176 | | 298 22 |
| | " | ✓ | 4898 | 9133 | | 613 85 | | ✓ | ✓ 4710 | 9177 | | 486 89 |
| | 15 | ✓ | 5059 | 9134 | | 644 | | 25 | ✓ 4763 | 9129 | | 186 68 |
| Oct | 18 | ✓ | 5172 | 9135 | | 2770 | Sep | 3 | ✓ 4863 | 9132 | | 211 21 |
| Nov | 3 | ✓ | 5690 | 92 | | 2610 | | " | ✓ 4866 | | | 38618 |
| | 8 | ✓ | 5777 | 94 | | 63 10 | | ✓ | ✓ 4877 | 9133 | | 6986 64 |
| | 13 | ✓ | 5871 | 97 | | 1351 20 | | 15 | ✓ 5060 | 9134 | | 3923 |
| | | | | | | | | 23 | Do office | 9144 | | 27 27 |
| | | | | | | | | 28 | Ck mgn | 9218 | | 6000 00 |
| | | | | | | | | 25 | Do office | 9144 | | 27 26 |
| | | | | | | | | 26 | ✓ | 9145 | | 27 26 |
| | | | | | | | | 29 | Ck mgn | 9223 | | 500 00 |
| | | | | | Nov | 3 | Bals | 5638 | 92 | | | 872 09 |
| | | | | | | ✓ | ✓ | 5689 | ✓ | | | 2545 91 |
| | | | | | | 8 | ✓ | 5778 | 94 | | | 2248 92 |
| | | | | | | 13 | ✓ | 5872 | 97 | | | 4759 39 |
| | | | | | Dec | 6 | Ck to Eugene | | 956 | | | 3423 |

1800 Lbs
135 Bottles
420

PLAINTIFF'S EXHIBIT NO. 5

PE S-Fed

SHEET NO 1 ACCT NO 78

NAME 2 M Calvert

ADDRESS Carrollton Mo

| 1977 | | ITEMS | POS. | DEBITS | 1978 | | ITEMS | POS. | CREDITS |
|---|---|---|---|---|---|---|---|---|---|
| Feb | 26 | Bal S | 2153 | 63374 | Jan | | ck mgn | 915 | 6332 |
| Mar | 17 | ck Morgan | 926 | 20000 | | 6 | " | 917 | 20000 |
| | 17 | Bal S | 2330 | 34481 | | 17 | Bal S | 2374 | 46637 |
| | 25 | ✓ | 2699 | 5360 | | 20 | ✓ | 2378 | 383 4770 |
| Apr | 2 | | 2568 | 7569 | | 24 | ✓ | 2416 | 2344 11437 |
| | 10 | ✓ | 2663 | 7622 | | 25 | ✓ | 2440 | 2355 24 11755 19 |
| May | 8 | | 2771 | 7722 | Apr | 9 | | 2651 | 7862 14 12 4215 |
| June | 7 | ck Morgan | 2887 | 66 15000 00 | | 22 | ck mgn | | 615 50000 |
| | 7 | Bal S | 3295 | 78 15743 | | 27 | Bal S | 2718 | 7711 62 30135 |
| | | ✓ | 3296 | - 240623 | | 28 | ✓ | 3139 | 8771 739 32 1797 |
| | 28 | ✓ | 9652 | 7992 19927 94 | June | 7 | | 3297 | 9811 8453 36 |
| July | 3 | ✓ | 3780 | 8296 44737 | | 18 | ck mgn | 9888 | 6 19 30000 |
| | 7 | ✓ | 3850 | 8373 56802 | | 28 | Bal S | 3651 | 8772 23871 75 |
| | 12 | ✓ | 3906 | 8400 56777 | | 28 | ✓ | 3674 | 8772 94 505 |
| Aug | 4 | | 4272 | 8712 56552 20 | | 28 | ✓ | 3675 | - 1172 9451 |
| | 6 | ✓ | 4269 | 8713 44736 | July | 3 | ✓ | 3731 | 8796 5 13 07 59041 |
| | 7 | ✓ | 4278 | 8714 44853 | | | | 3800 | 1478 98 |
| | 13 | ✓ | 4353 | 8717 1476 | | 8 | ✓ | 3821 | 8797 1172 43 5 10 92 43 5 43 17 |
| | | ✓ | 4376 | ✓ 51302 | | 25 | ck mgn | 9125 | 8 00 500 00 |
| | 19 | | 4421 | 8719 78455 | Aug | 6 | Bal S | 4270 | 8713 6 36 72 1599 03 |
| | 20 | ✓ | 4437 | 8719 14062 | | | ✓ | 4273 | 8713 4773 |
| | 22 | ✓ | 4329 | 8722 29455 | | 11 | ✓ | 4318 | 8715 8 01 15 43 |
| | 26 | | 4623 | 8725 7806 | | 18 | ck mgn | 9962 | 8 15 23 |
| | 29 | ✓ | 4707 | 8727 10 5446 | | 20 | Bal S | 4438 | 8719 5 55 62 |
| | 29 | ✓ | 4731 | 8728 10 39965 | | 22 | ✓ | 4837 | 8722 1117 21397 29 |
| | | ✓ | 4740 | 8728 29955 | | 29 | ✓ | 4852 | 8723 10 48128 |
| | | ✓ | | 36377 | | | ✓ | | 19308 |
| Sep | 4 | ✓ | 4916 | 8734 11 9851 | | | ✓ | 4553 | - 746 29 23602 |
| | 18 | ✓ | 5109 | 8741 11 20048 | | 25 | ✓ | 4592 | 8726 10 5 28 28 |
| Oct | 23 | ✓ | 5551 | 8756 25160 | | 25 | ✓ | 4606 | 8726 560 |
| Nov | 3 | ✓ | 5695 | 8772 91664 80 | | 26 | ✓ | 4620 | 8725 13685 |
| | 8 | ✓ | 5769 | 8784 11 7005 | | | ✓ | 4621 | - 624 30 |
| | | | | 3 4899 90 | | | ✓ | 4622 | ✓ 22 99 45 |
| | | | | | | 29 | ✓ | 4741 | 8728 500 11 4233 08 |
| | | | | | Sep | 2 | ✓ | 4811 | 8791 11 4233 20 |
| | | | | | | 4 | ✓ | 4715 | 8734 11 9551 48 |
| | | | | | | | ✓ | 4919 | 8736 19923 |
| | | Ford | | 25349 42 | | | | Ford | 12251 57 |

36337
14766
1319 80

Imco Bank
1319 80 Collection
8198 80

ACCT. NO CN 8 SHEET NO 2

NAME J. N. Calvert

ADDRESS Carrollton Mo

79

| 1924 | ITEMS | FOL. | DEBITS | 1924 | ITEMS | FOL. | CREDITS |
|---|---|---|---|---|---|---|---|
| | Brat Ford | | 2584942 | | Bratford | | 1225151 |
| | | | | Sep 12 | Bvd. 5105 | J138 | 8071 |
| | | | | 18 ✓ | 5110 | J101 | 16146 |
| | | | | 19 ✓ | 5114 | J102 | 2465 |
| | | | | 27 ✓ | 5117 | J116 | 21870 |
| | | | | Nov 3 ✓ | 5496 | J2 | 109575 |
| | | | | 8 ✓ | 5770 | J4 | 81894 |
| | | | | Dec 6 | Tr to Duquesne | J54 | 38626 |

PLAINTIFF'S EXHIBIT NO. 6

Pex 6-HW

SHEET NO. 1 ACCT. NO. CM-12

NAME Ernest Miller

ADDRESS Tina Mo

83

| 19 | | | | | | 19 | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| Apr | 5 | Bob | 3407 | 980 | 583333 | Feb | 28 | ck | mgn | 924 | 500000 |
| June | 6 | " | 3266 | 980 | 202110 | | 29 | Bob | 3177 | 946 | 7278 |
| | 9 | " | 3306 | 982 | 204114 | Mar | 14 | ck | mgn | 924 | 500000 |
| | 10 | ck | mgn | 984 | 204152 | | 28 | " | " | 933 | 500000 |
| | 24 | Bob | 3478 | 987 | 199122 | | | | | | |
| | 26 | " | 3543 | 989 | 296033 | May | 17 | " | " | 970 | 400000 |
| | 29 | " | 3608 | 990 | 102334 | June | 6 | Bob | 3267 | 980 | 417776 |
| | 28 | ck | cash | 994 | 227812 | | 9 | " | 3307 | 982 | 450077 |
| | | | | | 278146 | | | | | | |
| | | | | | 1000000 | | 18 | ck | mgn | 988 | 400000 |
| Aug | 21 | Bob | 4478 | 9120 | 232265 | | 24 | Bob | 3479 | 987 | 3465 |
| | 27 | " | 4562 | 923 | 372429 | | 26 | " | 3504 | 984 | 3187 |
| | 26 | ck | cash | 972 | 3710256 | | 27 | " | 3609 | 995 | 3455 |
| | 29 | Bob | 4796 | 9128 | 1000000 | | | | | | |
| | | | | | 938772 | July | | | 3723 | 995 | 4062 |
| | | " | 4763 | " | 1151138 | | 18 | ck | mgn | 996 | 1200000 |
| Sep | 2 | " | 4909 | 9133 | 1191066 | | 31 | " | | 9132 | 1200000 |
| | | | | | 1244143 | | | | | | |
| | 16 | " | 5072 | 9140 | 1532149 | Aug | 21 | Bob | 4476 | 9120 | 2272 |
| Oct | 16 | " | 5101 | 9153 | 1597890 | | 23 | " | 4561 | 9123 | 2385 |
| Nov | 13 | " | 5883 | 97 | 2326732 | | 29 | " | 4737 | 9128 | 2411 |
| | 14 | " | 5945 | 99 | 1050901 | | " | " | 4743 | " | 1222407 |
| | 18 | " | 6051 | 911 | 2010603 | Sep | 3 | " | 4902 | 9133 | 1736 |
| | 19 | " | 6094 | 912 | 446310 | | 16 | " | 5074 | 9140 | 2786 |
| | 25 | " | 6174 | 915 | 1001120 | Oct | 2 | ck | mgn | 9129 | 1000000 |
| | | | | | | | 13 | " | " | 994 | 1000000 |
| | | | | | | | 28 | Current Deposits | | 9150 | 2506 |
| | | | | | | Nov | 12 | Bob | 5823 | 95 | 730649 |
| | | | | | | | " | " | 5824 | 96 | 2204774 |
| | | | | | | | 13 | " | 5887 | 97 | 2347538 |
| | | | | | | | 14 | " | 5946 | 99 | 3247891 |
| | | | | | | | 18 | " | 6052 | 911 | 2035977 |
| | | | | | | | 19 | " | 6093 | 912 | 2741721 |
| | | | | | | | 25 | " | 6175 | 915 | 2903155 |
| | | | | | | Dec | 1 | Effects Assignment | | 954 | 3166443 |

2890 25 dust
56 00 cuttings
2946 25

PLAINTIFF'S EXHIBIT NO. 7

Pltf 7 = Page 1 thru

SHEET NO. 1 ACCT. NO. C71 59

NAME C R Dickinson

ADDRESS R 3 D 5 [illegible]

81

| 1932 | | ITEMS | FOL. | CREDITS | 1932 | | ITEMS | FOL. | CREDITS |
|---|---|---|---|---|---|---|---|---|---|
| July | 28 | Pds · 4096 | 3107 | 100 67 | July | 28 | Pds · 4097 | 3107 | 318 95 |
| Sep | 3 | ✓ · 4872 | 3133 | 156 72 | Sep | 3 | ✓ · 4871 | 3193 | 224 24 |
| | 4 | ✓ · 4918 | 3134 | [illegible] | | 4 | ✓ · 4917 | 3134 | [illegible] |
| | 16 | ✓ · 5075 | 3140 | [illegible] | | 16 | ✓ · 5076 | 3140 | [illegible] |
| Oct | 16 | ✓ · 5434 | 3153 | 303 185 | Nov | 26 | ✓ · 6206 | 316 | 230 471 |
| Nov | 26 | ✓ · 6207 | 316 | 37560 | On | h | [illegible] | 3154 | [illegible] |

Rec 7 - Page 2 No

SHEET NO 1 ACCT. NO C7117

NAME S P Oakman

ADDRESS Tina Mo 82

| 1927 | | ITEMS | FOL. | CREDITS | 1928 | | ITEMS | FOL. | CREDITS |
|---|---|---|---|---|---|---|---|---|---|
| April | 12 | Prb · 2705 | $84 | 248 06 | Mar | 1 | ck mdse | $15 | 500 00 |
| | 15 | ck amt | $46 | 4800 00 | | 3 | " " | $16 | 250 00 |
| June | 4 | Prb · 3210 | $79 | 1468 38 | | 12 | Prb · 3760 | $87 | 1632 71 |
| | 6 | ck amt | $80 | 4500 00 | | 14 | ck mdse | $24 | 300 00 |
| | 19 | Prb · 3391 | $85 | 2586 94 | | | | | 3232 71 |
| | 25 | " · 3522 | $88 | 6[illegible] 95 | | 28 | " | $33 | 4800 00 |
| | 26 | " · 3553 | $89 | 5[illegible] 14 | May | 20 | Prb · 3057 | $75 | 1877 21 |
| July | 2 | " · 3739 | $95 | [illegible] 86 | | | | | 9778 53 |
| | 22 | " · 4038 | $105 | [illegible] 58 | June | 4 | " · 3211 | $79 | 560 56 |
| Aug | 5 | " · 4253 | $112 | [illegible] 70 | | 19 | " · 3390 | $85 | 4980 07 |
| | 21 | " · 4484 | $121 | [illegible] 73 | | 25 | " · 3523 | $88 | 1[illegible] |
| Sep | 3 | " · 4859 | $131 | 376 86 | | 26 | " · 3554 | $86 | [illegible] |
| | | " · 4898 | $133 | [illegible] 85 | July | 2 | " · 3740 | $95 | [illegible] |
| | 16 | " · 5079 | $140 | [illegible] 52 | | 22 | " · 4039 | $105 | [illegible] |
| Sep | 19 | ck amt | $211 | 500 00 | Aug | 5 | " · 4254 | $112 | [illegible] |
| Oct | 10 | ck Bal for cat | $92 | 60 250 | | 21 | " · 4485 | $121 | [illegible] |
| | 16 | Prb · 5482 | $113 | 96 15 50 | | 31 | " · 4860 | $132 | [illegible] |
| Nov. | 13 | " · 5882 | $87 | 2313 83 | Sep | 3 | " · 4861 | " | 411 [illegible] |
| | 14 | " · 5943 | $88 | 250 30 | | | " · 4893 | $133 | 761 [illegible] |
| | 18 | " · 6043 | $111 | 1006 60 | | 16 | " · 5080 | $140 | [illegible] |
| | 19 | " · 6097 | $112 | 138 10 | | 29 | ck mdse | $224 | 2000 00 |
| | 25 | " · 6194 | $115 | 744 65 | Oct | 6 | " | $33 | 6000 00 |
| | | | | | | 10 | " | $91 | 6025 50 |
| | | | | | Nov. | 12 | Prb · 5845 | $96 | 1367 73 |
| | | | | | | | · 5846 | | 2193 48 |
| | | | | | | 13 | " · 5881 | $97 | 2335 87 |
| | | | | | | 14 | " · 5944 | $89 | 1130 47 |
| | | | | | | 18 | " · 6044 | $111 | 1210 98 |
| | | | | | | 19 | " · 6097 | $112 | 4991 48 |
| | | | | | | 25 | " · 6195 | $115 | 1614 42 |
| | | | | | Dec | 6 | Tfr to Mayme | $358 | 3[illegible] |

9975 22

Sls 32732
2415 50

Jan 1928
3550
110

PEO 7-HW: Page 3

SHEET NO. 1 ACCT. NO. CM"7

NAME W L Dickinson

ADDRESS Carrollton Mo

83

| 1942 | | ITEMS | FOL. | ✓ | CREDITS | 1942 | | ITEMS | FOL. | ✓ | CREDITS |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Feb | 25 | Bal. 2142 | 955 | | 10387 | Feb | 26 | Bal. 2163 | 955 | | 24149 |
| Mar | 15 | Check | 924 | | 23632 | Mar | 4 | Ck. mdse | 916 | | 5000 |
| | 14 | Bal. 2302 | 950 | | 38708 | | 14 | Bal. 3901 | 950 | | 43578 |
| | 26 | " 2458 | 955 | | 49527 | | 26 | " 3957 | 955 | | 44267 |
| Apr | 4 | " 2576 | 960 | | 53627 | Apr | 4 | " 3977 | 960 | | 44899 |
| May | 23 | " 3084 | 975 | | 68834 | May | 27 | " 3985 | 975 | 62 | 26308 |
| June | 4 | " 3201 | 979 | | 101547 | June | 4 | " 3200 | 979 | 25 | 1 30 154 |
| | 24 | " 9461 | 987 | | 105947 | 240 | 22 | " 3960 | 987 | | 58 |
| | 27 | " 3627 | 991 | | 115206 | | 27 | " 3630 | 991 | | 68706 |
| | " | " 3630 | 991 | | 21 57412 | | 27 | " 3629 | 991 | 48 | 12866 |
| aug | 12 | Check | 953 | | 1 5 9 8 | July | 1 | " 3719 | 995 | 437 | 18737 |
| | 21 | Bal. 4481 | 921 | | 3 6 3 3 | aug | 21 | " 4482 | 921 | 200 | 19 6 |
| Sep | 2 | " 4822 | 932 | | 3 8 5 3 | Sep | 2 | " 4821 | 932 | | 3 5 1 |
| | 3 | " 4870 | 933 | | 3 9 4 2 | | 3 | " 4869 | 933 | | 3 2 3 |
| | " | " 4890 | 9133 | | 6277 | | 3 | " 4889 | 9133 | | 4 3 |
| | 16 | " 5081 | 940 | | 3 4 4 3 | | 16 | " 5082 | 940 | | 3 9 3 |
| Oct | 16 | " 5443 | 953 | | 3 5 0 5 | Nov | 19 | " 6101 | 912 | | 3 8 5 1 |
| Nov | 19 | " 6102 | 912 | | 4 1 7 5 | | 26 | " 6208 | 916 | | 4 1 7 |
| | 26 | " 6209 | 916 | | 30 | | | | | | |
| | | | | | 22560 | Dec | 6 | Life & Expense | 950 | | 26 1 |
| | | | | | | | | | | | 454743 |

4970 #1
393.42
1547.74
8 11/29

38632 Rec'd
50 - Collected
33632

[fol. 53] Demand for payment has been made upon each of the defendants at or about the time each of these accounts was closed. No payments have been made on any of the accounts. The amounts due from each defendant are as follows:

Joe Dickson account was from March 17, 1924, to November 13, 1924, and the amount shown due at that time was $3,632.25. The amount of interest since that time is $771.91, and the total due is now $4,410.16.

The next account is I. N. Calvert. The date is from February 6, 1924 to November 8, 1924; the amount due us at that time was $3,886.20, the interest $835.53, making a total of $4,721.73.

The next account is Ernest Miller. The period is February 28, 1924, to November 25, 1924. The amount due us is $3,106.43, interest $659.08, total $3,765.51.

As to the last three accounts, C. R. Dickson, C. P. Dickson, and E. L. Dickson, we have notes signed by Mr. C. T. Dickson, who has guaranteed the notes. For C. R. Dickson, the period is July 28, 1924 to November 26, 1925, the amount due, $782.27, the interest is $165.84, making a total of $948.11. S. P. Dickson, the period is April 12, 1924 to November 25, 1924, the amount due us is $2,415.52, interest $512.49, total $2,928.01. W. L. Dickson, February 25, 1924 to November 26, 1924, amount due us $1,547.43, interest $328.05, total $1,875.48.

I have here a record showing when orders were executed for sale and purchase for the defendants; I have the record showing what the transaction was. I have an itemized statement of the A. P. Dickson account showing in detail all of the trades that were made for that account.

(Here plaintiff's counsel had marked for identification plaintiff's Exhibit 8, 8-a, and 8-b.)

Exhibit 8 is a copy of the original purchase and sale of 10,000 bushels of Chicago September wheat, merely an accounting of the purchase price and of the price sold, showing the net result of the credit to the customer of $16.65. It is an accounting of the purchase and sale of 10,000 bushels of Chicago September wheat. Exhibit 8-a is a confirmation of a trade we made on the purchase of 10 Chicago September

wheat, and Exhibit 8-b is a confirmation of the sale which [fol. 54] we made on the 10 Chicago September wheat. These are copies of confirmations. The originals were sent to the customer on the dates they bear; these are copies made by our office from our records. In each transaction with the defendants records similar to these were made and the originals mailed to the customer at or immediately subsequent to the time the sale was made or the purchase made. They received the originals on every transaction we made for them. This is true as to every one of the defendants. These accounts were sent out to the customer on the same day the transactions were executed.

Plaintiff's counsel offered these Exhibits in evidence. Defendants objected to the offer of Exhibits 8, 8-a and 8-b, not because they are copies, but because they do not identify themselves with the account attached to the petition; the reason being there is no itemized statement attached to the petition and that they are inadmissible to prove any item or items that are set forth in the attached account.

"The Court: Well, I understand that, no proof, of course, that they were actually mailed. However, if there is any question about them being received by the customers in this case, the defendants, then counsel would have to make proper proof.

Mr. S. J. Jones: No, I don't want to do that; that is, as far as sending out these statements that were sent out, they are true.

The Court: Now, I understand the objections made here by counsel is one of a typical case, and the proof is that the same transaction occurred with respect to each item in the account of each defendant. That is the proof. I mean, that is what it contains.

Mr. S. J. Jones: I don't know as to that.

The Court: You are not objecting to it on that ground?

Mr. S. J. Jones: Oh, no. My ground is that this account attached to the petition and the statement here does not connect up with the purported account filed; doesn't tend to prove the particular account or the amount sued upon.")

These accounts went through the journal and then on to the ledger.

(Said Exhibits were admitted in evidence, defendants at the time excepting.)

[fol. 55] Exhibit 8 is in words and figures as follows:

PLAINTIFF'S EXHIBIT 8

"Uhlmann Grain Co., Grain Merchants

No. 2529

Account Purchase and Sale of 10 Chgo. Sept. Wheat for Account and Risk of A. P. Dickson, c/o Dickson Bros.

| Bought CN 30 | | | | | Sold CN Mo. | | | | |
|---|---|---|---|---|---|---|---|---|---|
| Date | Quan'y | Commodity | Price | Cost | Date | Quan'y | Commodity | Price | Proceeds |
| 3, '31 | 10 | S.W. | 103¾⅛ | 10,381.25 | 3, '28 | 10 | S.W. | 104¼ | 10,425.00 |
| | | Commission.... | | 25.00 | | | | | |
| | | Stamp Tax.... | | 2.10 | | | | | |
| | | Gain..... | | 16.65 | | | Loss..... | | ..... |
| | | | | 10,425.00 | | | | | 10,425.00 |

To Credit 16.65.
Kansas City, Mo., 3-31, 1924."

Said Exhibit 8-a is in words and figures as follows:

PLAINTIFF'S EXHIBIT 8-A

No. —

Uhlmann Grain Company, 338 Board of Trade

"Fred Uhlmann, President; Paul Uhlmann, Vice-President;
Richard Uhlmann, Sec'y & Treas.

Kansas City, Mo., 3/31, 1924.

CN 30.

Mr. A. P. Dickson, Carrollton, Mo.:

We have this day bought for your account, at Chicago, Ill. All transactions made by us for your acount contemplate the actual receipt and delivery of the property and payment therefor. We reserve the right to close these transactions when deposits are running out, without giving further notice. We also reserve the privilege of clearing all transactions through Clearing Associations, if there be any, from day to day in accordance with the usage, rules or regulations of the Exchange where the trade is made, prevailing at the time. All purchases and sales made by us for you

[fol. 56] are made in accordance with and subject to the rules, regulations and customs of the Chamber of Commerce or Board of Trade where the trades are made, and the rules, regulations and requirements of its Board of Directors, and all amendments that may be made thereto. This contract is made under authority of the Act of Congress known as "The Future Trading Act."

| Quantity | Delivery | Article | Price | Bought of | Address |
|---|---|---|---|---|---|
| 10 | S. | W. | 103¾ ⅞ | Chgo. | ..... |

We do not consider orders open from one day to next, unless by special instructions.

Uhlmann Grain Company, by D."

Said Exhibit 8-b is in words and figures as follows:

PLAINTIFF'S EXHIBIT 8-B

Uhlmann Grain Company, 338 Board of Trade

"Fred Uhlmann, President; Paul Uhlmann, Vice-President; Richard Uhlmann, Sec'y & Treas.

No. —

Kansas City, Mo., 3/28 1924.

CN 30.

Mr. A. P. Dickson, Carrollton, Mo.:

We have this day sold for your account, at Chicago, Ill. All transactions made by us for your account contemplate the actual receipt and delivery of the property and payment therefor. We reserve the right to close these transactions when deposits are running out, without giving further notice. We also reserve the privilege of clearing all transactions through Clearing Associations, if there be any, from day to day in accordance with the usage, rules or regulations of the Exchange where the trade is made, prevailing at the time. All purchases and sales made by us for you are made in accordance with and subject to the rules, regulations and customs of the Chamber of Commerce or Board of Trade where the trades are made, and the rules, regulations and requirements of its Board of Directors, and all amendments that may be made thereto. This contract is made under au-

[fol. 57] thority of the Act of Congress known as "The Future Trading Act."

| Quantity | Delivery | Article | Price | Sold to | Address |
|---|---|---|---|---|---|
| 10 | S. | W. | 104'4 | Chgo. | ..... |

We do not consider orders open from one day to next, unless by special instructions.

Uhlmann Grain Company, by D."

The transactions as recorded on these sheets here, were reflected on our ledger sheets that were introduced in evidence this morning. This appears on the ledger sheets that were offered in evidence this morning with relation to every one of the defendants. I have all of the records of which this is typical, showing the items of debit and credit reflected on the original ledger sheets as to each one of these defendants. I have compared them to see whether or not they properly reflect the items as shown on these statements. They are correct in each instance. These items were posted from the journal. The journal was made up of these loose sheets. Entries were made in the journal from the P. & S. "P. & S." means purchase and sale. These are copies of original entries made by the Uhlmann Grain Company reflecting these transactions.

All of these statements represent and reflect the moneys which we paid out in excess of the moneys which we received covering the trades that we made for their account, plus our commission. These are the original memorandum sheets from which the journal sheets were made, and from that posted to the ledger. These are the original records that were made of the transactions.

None of the items in these transactions represent any profit made by the Uhlmann Grain Company out of any loss by any defendant in any transaction.

The transactions as shown on this typical P. & S. account were consummated or made on the Chicago Board of Trade. They were executed by purchase and sale in the pit—the Chicago pit—with another broker. The Uhlmann Grain Company would be a party to the transaction—one party to the transaction. The other party would be whoever the broker was on the other side that bought or sold. These [fol. 58] transactions executed on the Chicago Board of Trade were always executed between members of the Board

of the Exchange itself. I have before me all of the P. & S. statements. I have examined them. Among all of these transactions only one was executed on the Kansas City Board of Trade. It was one on September tenth. We bought 10 Kansas City December wheat at $1.18⅞, and on November 3 we sold 10 Kansas City December wheat at $1.30. That is on the account of Mr. I. N. Calvert. That is the only Kansas City trade we have on this account. It resulted in a profit to Mr. Calvert of $1,112.50. Mr. Calvert was given credit for that and no attempt is being made to recover any part of that in this lawsuit. It is not involved so far as any recovery is sought in this case. Credit was given to Mr. Calvert and this was deducted from the balance due us. Outside of that one transaction, none of these transactions of purchase and sale was executed on the Kansas City Board of Trade. All of them were executed on the Boards of Trade of Chicago, Minneapolis or Winnipeg.

Plaintiff's Exhibit 9 is a typical telegram made up by our operator in Chicago who received a telegram from the Kansas City office. A typical transaction initiating in Carrollton for execution say in Winnipeg would be this: We would receive a wire from our representative at Carrollton that would read like this: "Buy 10 Chicago December wheat; sell 10 Winnipeg October wheat, at 3 cents difference, account CN-219," which our operator in Kansas City would receive and relay to Chicago, and Chicago would receive it in this manner. This is a reproduction of the operator's receiving of the message in Chicago. (i. e. Exhibit 9) If it was a Winnipeg transaction, the Uhlmann Grain Company at Chicago would wire to our broker in Winnipeg to sell 10 Winnipeg October at a certain price. The Chicago office would receive a wire from the broker in Winnipeg saying that he had sold 10 Winnipeg October at a certain price. When this information was received at Chicago, Chicago would, in turn, wire the Kansas City office that they had bought 10 Chicago December wheat and sold 10 Winnipeg October wheat for the account CN-219. Then Kansas City would notify CN-219 by a confirmation of his trade, which we have already seen, stating that we had bought 10 Chicago December and sold 10 Winnipeg October wheat, giving the price on which the trade was actually executed.

By Mr. Stinson:

"Q. What record, in a general way, without going to any specific one, would be made by the Kansas City office showing first the name of the customer, by whom this transaction [fols. 59 & 60] was executed, what record would there be in Kansas City of it?

A. There would be a wire from the Chicago office that these trades were executed for this account number. And this Account number, of course, we would put into our ledger an exact reproduction of the trade from Chicago.

Q. What about a record of the telegram that came from Carrollton to Kansas City for the execution of the order?

A. I don't know whether we have that or not.

Q. Well, you would have it.

A. Well, we had it at the time, there is no question about that.

Q. What about the terms of the transaction as to the price and terms of delivery?

A. The price would be stated—on the order to buy, you mean, or the execution of the order?

Q. Well, on either one.

A. Yes, the price would be stated at the place where the actual transaction was made, also the delivery.

Q. This record you have in front of you, what does that show with relation to that typical transaction? What does it show about the parties to the transaction or your customer?

A. It shows we bought 10 December wheat and sold 10 Winnipeg October wheat.

Q. For whom?

A. For account CN-219.

Q. Do you have a record showing who CN-219 is in your Kansas City office?

A. Yes, sir.

Q. Would it show the price here, this record here, and does it?

A. Yes.

Q. Does it show the terms of delivery, what month delivery is to be made in, or the purchase?

A. Yes, sir.

Q. So you have got that record right there, haven't you?

A. Yes, sir; I have this record here.

Q. Do any Kansas City records, typical records of these transactions, show the name of the person with whom the Uhlmann Grain Company contracted in behalf of the customer?

A. In Chicago?

Q. In Kansas City. Do any Kansas City records show that?

A. No, sir.

Q. These records are shown in Chicago?

A. Yes, sir."

All orders executed for all of these defendants with the exception of the one for Calvert were relayed by the Kansas City office in Chicago and executed by the Chicago office, either on the Chicago Board of Trade or on one of the other Boards of Trade.

Plaintiffs' Exhibit 9 is in words and figures as follows:

(Here follows exhibit, side folios 61 & 62, 63 & 64)

UHLMANN GR

BUY

1000 1

3400 1/8

10

13453/8

Pltf's Ex. 9

AIN CO. 8/19 30

SELL

10/1/49 oct N

10/7/8

137/8 Sea

0 79

UHLMANN GRAIN ACCOUNT

PLAINTIFF'S EXHIBIT NO. 9

61-62

| CLASS OF SERVICE | SYMBOL |
|---|---|
| Telegram | |
| Day Letter | Blue |
| Night Message | Nite |
| Night Letter | N L |

If none of these three symbols appears after the check (number of words) this is a telegram. Otherwise its character is indicated by the symbol appearing after the check.

# WESTERN UNION TELEGRAM

NEWCOMB CARLTON, PRESIDENT GEORGE W.

RECEIVED AT CHICAGO BOARD OF TRADE OFFICE

23GD NP 11

"Gd"

UHLMANN

SOLD 10 OCT WHT 139 7/8

SEABOARD

857A

STANDARD TIME

Form 1218

# UNION

# RAM

GE W. E. ATKINS, FIRST VICE-PRESIDENT

| CLASS OF SERVICE | SYMBOL |
|---|---|
| Telegram | |
| Day Letter | Blue |
| Night Message | Nite |
| Night Letter | N L |

If none of these three symbols appears after the check (number of words) this is a telegram. Otherwise its character is indicated by the symbol appearing after the check.

AUG 19 1924

*d" Winnipeg, Man.*

5/13

63-64

[fol. 65] Plaintiff's Exhibits 10, 11, 12 and 13 are promissory notes executed and signed by C. T. Dickson, Ernest Miller, C. R. Dickson and W. L. Dickson. Each one of the Dickson notes is signed by C. T. Dickson. He is the only Dickson who was sued in these cases. The note signed by Ernest Miller is signed by the Mr. Miller who is one of the defendants in these cases. The actual amount due from these defendants in these cases where notes are involved, in some instances are less than the amounts of the notes. In some instances they are greater.

PLAINTIFF'S EXHIBITS 10, 11, 12, 13

Said Exhibits 10, 11, 12 and 13 offered by plaintiff were received in evidence.

Plaintiff's Exhibit 10 is a promissory note for $4,000.00, dated October 8, 1924. The maker is C. L. Dickinson and the payee is Uhlmann Grain Company.

Plaintiff's Exhibit 11 is a promissory note signed by W. L. Dickinson and by C. L. Dickinson, is payable to Uhlmann Grain Company. It is for $3,000.00, is dated October 8, 1924, and is payable 90 days after date.

Plaintiff's Exhibit 12 is a promissory note signed by C. R. Dickinson and C. L. Dickinson. It is dated October 8, 1924, is for $1,000.00, is payable 90 days after date.

Plaintiff's Exhibit 13 is a promissory note signed by Ernest Miller, dated October 8, 1924, is for $4,000.00, is payable in 90 days, and the payee is Uhlmann Grain Company.

Where a customer makes a purchase and sale, or vice versa, which results in a loss, Uhlmann Grain Company pays it through the clearing house where the trade would clear, or we would pay it as a margin to our broker. When trades are made, for instance, on the Chicago Board of Trade, after the market closes that day, a settlement is made with the clearing house at or on the basis of the closing, whatever delivery month it might be. If we owed the clearing house any money after our report was made, we either paid them, or if we had money coming in from the clearing house we collected a check from the clearing house and our brokers did likewise.

[fol. 65] Plaintiff's Exhibits 10, 11, 12 and 13 are promissory notes executed and signed by C. T. Dickson, Ernest Miller, C. R. Dickson and W. L. Dickson. Each one of the Dickson notes is signed by C. T. Dickson. He is the only Dickson who was sued in these cases. The note signed by Ernest Miller is signed by the Mr. Miller who is one of the defendants in these cases. The actual amount due from these defendants in these cases where notes are involved, in some instances are less than the amounts of the notes. In some instances they are greater.

PLAINTIFF'S EXHIBITS 10, 11, 12, 13

Said Exhibits 10, 11, 12 and 13 offered by plaintiff were received in evidence.

Plaintiff's Exhibit 10 is a promissory note for $4,000.00, dated October 8, 1924. The maker is C. L. Dickinson and the payee is Uhlmann Grain Company.

Plaintiff's Exhibit 11 is a promissory note signed by W. L. Dickinson and by C. L. Dickinson, is payable to Uhlmann Grain Company. It is for $3,000.00, is dated October 8, 1924, and is payable 90 days after date.

Plaintiff's Exhibit 12 is a promissory note signed by C. R. Dickinson and C. L. Dickinson. It is dated October 8, 1924, is for $1,000.00, is payable 90 days after date.

Plaintiff's Exhibit 13 is a promissory note signed by Ernest Miller, dated October 8, 1924, is for $4,000.00, is payable in 90 days, and the payee is Uhlmann Grain Company.

Where a customer makes a purchase and sale, or vice versa, which results in a loss, Uhlmann Grain Company pays it through the clearing house where the trade would clear, or we would pay it as a margin to our broker. When trades are made, for instance, on the Chicago Board of Trade, after the market closes that day, a settlement is made with the clearing house at or on the basis of the closing, whatever delivery month it might be. If we owed the clearing house any money after our report was made, we either paid them, or if we had money coming in from the clearing house we collected a check from the clearing house and our brokers did likewise.

During all this time the plaintiff was a member of the Clearing House of the Chicago Board of Trade, but was not a clearing member in Minneapolis or Winnipeg. The only difference between Chicago and Winnipeg and Minneapolis is that the trades would be cleared in Winnipeg or Minneapolis through the clearing house by the broker who [fol. 66] executed the trade for our account. The Chicago Uhlmann Grain Company would clear through the clearing house direct. So that whenever there is a debit charge against any of these defendants in any one of these transactions shown by these P. & S.'s, it reflects an actual payment of the amounts charged against the customer by the Uhlmann Grain Company. In the instances when the transaction resulted in a profit, we sent them checks. They would be mailed out at Kansas City to the customer in Carrollton, or to our office in Carrollton for the customer, if he so directed.

Uhlmann Grain Company always kept up a margin with the Chicago Clearing House. In Winnipeg and Minneapolis our brokers, who are members of the different markets there, have the same clearing systems that we have all over. It is universal. They have to make the same reports to their clearing house as we do here in Chicago, and of course margins would necessarily have to be kept up with our broker in the outside market.

In a typical day, if at the end of a day's trade, Uhlmann Grain Company owed the clearing house it would send the clearing house a check. This is done every day. If the clearing house owed the Uhlmann Grain Company it would send us a check. In other words, Uhlmann Grain Company was behind each one of the transactions executed for the customer. The trade was made in our own name for each account in each instance.

Cross-examination:

Purchases on the Chicago Board of Trade and other Boards of Trade were made by the Uhlmann Grain Company in the manner I have described. These settlements made at the end of the day were between the Uhlmann Grain Company and Grain Clearing Company. Every trade is cleared through the clearing house. I mean by that, when the Uhlmann Grain Company makes purchases on the Chi-

cago Board of Trade it purchases from another broker. At the end of the day the two brokers settle through the clearing house; that is to say, the Uhlmann Grain Company settled its transactions that day with the clearing house. As far as we are concerned, the only parties to the transaction would be the Uhlmann Grain Company and the clearing house. We would buy grain from a broker on the other side of the clearing house. For instance, if Uhlmann Grain Company here in Kansas City were given an order to buy 10,000 bushels of wheat for May, the transaction would be made with some broker. We would make the trade for our customer's account. If you would make [fol. 67] an offer to sell your wheat someone would have to bid for it, and after the trade was executed you would find out who it was. The parties to the transactions would be the Uhlmann Grain Company and the broker at the other end.

I had no record other than the books and documents that I have referred to in previous testimony. I have not the journal with me, I have it at my office. I have here the originals of what the journal is made up from. We take a copy of this trade here when the trade is closed, to make the journal entry.

Our journal shows on the credit side that checks were received from the customers, and on the debit side the money we sent them. It also shows losses and profits on the trades which we have made too, and for that reason there are two different journals. The journal shows the number of bushels bought by the customer or sold by the customer on each different item. I could tell from these records how many bushels of grain Mr. Joe Dickson, for instance, bought and sold from the time that account was opened until it was closed. I will get those figures and produce them tomorrow.

(Here counsel for defendants asked witness to get such a record with reference to each defendant.)

Uhlmann Grain Company opened its office at Carrollton in the first part of 1924. I have never been at Carrollton myself. I bought the equipment that went there. We sent the equipment down from Kansas City. I know there was a telegraph instrument there. There was a private wire that

ran from that office to our office here in Kansas City. Its purpose was to transmit and receive messages. We received the grain market quotations here at Kansas City from the outside market. By outside market I mean Chicago, Minneapolis or Winnipeg. They come in often during the day. When we got that information at Kansas City it was relayed to Carrollton. We get these quotations over the ticker; they were relayed from Kansas City to Carrollton from the blackboard. All quotations went over this private wire to Carrollton.

McDonough was what we call our office manager at Carrollton. He had charge of it; and was out there representing the Uhlmann Grain Company. I know it to be a fact they put him in charge of that office. He was sent down there by Mr. Paul Uhlmann. Paul Uhlmann is Vice-President of Uhlmann Grain Company and manager of the Kansas City office.

[fol. 68] When an order was placed at Carrollton it was wired to Kansas City, then relayed to Chicago, and then Chicago relayed it to the other broker. That is, it was wired first to the Uhlmann Grain Company at Kansas City; then relayed to Chicago. If it was to be executed on the Minneapolis or Winnipeg market, it was then wired from Chicago. The reason it was wired from Carrollton to our office in Kansas City, naturally it would be wired here. You couldn't execute any trades from Carrollton. I had nothing to do personally with the transmission of any of those messages. I know that they were transmitted. I wasn't present all the time, but I have seen the wires that were sent. I am not a telegrapher myself. I did not have personal contact with these transactions; the only time I came in direct contact with them was when the trades were closed. That was in the capacity of bookkeeper or superintendent of keeping accounts.

Among other things, the Uhlmann Grain Company was dealing in grain futures. When these men bought grain, ordinarily they were required to put up margins. These margins were required for our protection. When we make a trade we make it in our name for the customer, and we are liable to the clearing house for the fulfillment of those contracts that we make for our customers. The margin was to protect us from any losses we might sustain in ful-

filling those contracts. There would be no loss unless there was a difference in the market. The purpose of the margins was to guard against our liability with the clearing house so far as fulfilling contracts we had made for those customers. The margin required per bushel varied. I do not remember what was required of the Carrollton customers. Nor do I remember whether all of them were required to put up margins.

"A. Well, if a man would buy grain at a certain price and the market would go down three or four cents a bushel, you know he wouldn't have a profit.

Q. He would lose, wouldn't he?

A. He would not have a profit."

If the market went the other way he made a profit.

If a customer bought 10,000 bushels at a certain price, that would be the contract price. If it was sold for more than that he would have a profit. In determining whether or not he had a profit or a loss, you would take the price at which it was bought and the market price at which it was sold. That is the way it was done; the trades were all closed out. During the period when these defendant customers were operating we would call on them to put up [fol. 69] money in the way of margins. This would be done if their account showed a loss at the time.

"A. Well, if their account showed a loss at the time, between what they had bought it and what they had sold it, and the present markets, that would determine how much they owed us or how much we owed them.

Q. That is right. And if you owed them, you wouldn't call on them for the margin, would you?

A. No, not if they had a profit on the trade.

Q. But if they had a loss there, you would call on them for more money?

A. They would be expected to margin their trade to the market.

Q. Now, in a general way, what you have stated is the way these trades were carried on, all of them?

A. That is true; yes, sir."

Among other things the Uhlmann Grain Company did, was dealing in grain futures.

Futures are commodities dealt in at a deferred time. For instance, if you give me an order to buy 10 Chicago December wheat, or Kansas City wheat, that would be a deferred future. Ordinarily, we would require a margin in connection with an order dealing in futures.

The transactions of these defendants would probably embrace several hundred thousand bushels of grain. Not a single bushel of it was ever delivered to my knowledge. It is not in the records. As far as the records are concerned, there wasn't a single bushel delivered, either bought or sold.

I am not an authority on the term "offered." I have heard of offers in connection with grain speculations on the Board of Trade. A "spread" is where you buy in one market and sell in another market, equal amounts. I presume you call that speculation. The spreads were on the Chicago Board of Trade and the Winnipeg market. The purpose of a spread would be, naturally, one would think that buying on that market, you would be figuring on going up, and if selling on another, figuring on going down, while one might be stationary and the other might go up.

A transaction would be settled in the end on a spread in this manner: If you had Winnipeg sold and Chicago bought, when the transaction would be completed it would be an execution of equal amounts, and vice versa. In other [fol. 70] words, you would buy in Winnipeg and sell in Chicago to close out the trade. In other words, if a man bought in Winnipeg and sold in Chicago and closed, he would have to sell in Winnipeg and buy in Chicago in order to complete the trade. The profit or loss in the transaction would be ascertained in this way: If you buy anything at a certain price and sell it at a price above that, you determine how much money you will have made by the net result. This is the same thing. That is, by taking the difference between what you bought it at and what you sold it for. That is the way these transactions were determined.

Every transaction whether these men won or lost, was determined by the purchase price and what it was sold for. Our commission does not become due on these trades until they are closed; that is, when both ends of it are closed out. That is by rule of the Exchange.

We had about fifty customers at Carrollton. All correspondence had with these defendants and other custom-

ers at Carrollton, was sent from Kansas City. Defendants' Exhibit A was written at our Kansas City office. I know Mr. McDonough's duties in a general way. He was just an office manager. I rather think he solicited these men to engage in these trades. That was one of his duties. I do not know whether a part of his duties was to advise them about the market. Among other things, McDonough bought and sold some cash grain for some of the men in Carrollton at the time. On all of these statements we sent out from Kansas City, the name of the seller or the purchaser was not given. In outside market trade it was not disclosed to any of these defendants who their grain was sold to in those cases where it was a sale, or who it was bought from when it was bought. On trades we had in Kansas City that would show, though. We did not send the Minneapolis orders direct to Minneapolis, because we have a direct wire from Kansas City to Chicago.

Redirect examination:

The capacity of the grain elevator in Kansas City in 1924, owned by the Uhlmann Grain Company was 1,300,000 bushels. A hedging transaction is this: We sell 10,000 bushels of cash grain; we buy our hedging to protect ourselves against loss in the fluctuation in the market. In other words, whenever we make a purchase of cash grain we sell futures, and when we sell that cash grain we buy the futures back in. That is what is called "hedging." Where there is a hedging of a purchase or sale, the only loss or profit that could be sustained would be either a re-[fol. 71] duction in the premium between the cash grain and the future. There is no element of speculation in a cash grain purchase or sale. None of the orders sent out by the Uhlmann Grain Company with other brokers in these markets or grain exchanges show whether or not the transactions are hedging transactions as far as either party to the contract is concerned. There is no way of determining what the intention of the other party to the contract is with reference to that; either the broker's customers or the broker himself. The quotations published on the blackboard at Carrollton represented actual transactions of purchase and sale. They were not fictitious but real transactions.

"Q. Now, in speaking of spreads, suppose a man goes to a Carrollton customer and buys 10,000 bushels of Chicago May wheat and at the same time sells an equal amount of Winnipeg wheat for future delivery, on the same month's delivery, what is the effect on the Chicago transaction of the Winnipeg transaction, so far as hedging is concerned?

A. One of them is a hedge against the other one.

Q. That is a typical hedge, is it not?

A. That would be, yes."

These confirmations sent from Kansas City to Carrollton customers were sent through the United States mail.

Recross-examination:

I presume that a hedge and a spread mean the same thing in the end, because if you buy something and hedge it by selling something else—. When you hedge the only loss that could be sustained would be through a reduction in the premium. I mean this. If you had cash wheat bought, and say you paid 6 over the option, and you sold your hedge against it to protect yourself from the fluctuation of the market, and you held this cash wheat, the wheat was then duly worth 2 cents over the option you have lost 4 cents a bushel in the premium. That would be the only loss it would be possible to sustain. If you bought today on the Chicago Board of Trade at a certain price and would hedge against it by buying on the Winnipeg market at the same amount and the market on one advances 10 cents and the other stands still, there would be a loss.

"Mr. S. J. Jones: Upon adjournment I thought there was some way to avoid the necessity of offering these various bills in evidence. I don't want to waive the objection I made to the introduction of evidence, but I will admit that these bills—I have forgotten what the exhibit was—if ad-
[fol. 72] mitted in evidence would prove the total of the amount sued on. The point I am making is simply this: It is not an itemized statement attached to the petition, and the point I want to make to the court is that the objection goes to the showing. I will withdraw the court with that understanding.

The Court: You challenge the correctness of the statements of debits and credits?

Mr. S. J. Jones: No, I don't challenge that. My challenge is that under the law it is not a sufficient itemized statement, and therefore, it not being a sufficient itemized statement, the petition falls. That is the legal point I raise. I don't think there has been any evidence offered—I think I objected to it—that the Chicago Board of Trade and Kansas City were contract markets. I will admit that both were contract markets, and so designated by the Secretary of Agriculture.

The Court: Not any admission with respect to Minneapolis and Winnipeg?

Mr. Stinson: Winnipeg would not. We have a certified copy of the opinions of the Secretary of Agriculture here.

Mr. S. J. Jones: I will admit that Minneapolis is so designated by the Secretary of Agriculture.

Mr. Stinson: We mean by that, during the period of time in controversy.

Mr. S. J. Jones: Yes, sir; I am sure that would be true, and I am going to admit it.

Now, with reference to blackboards, the admission, as I understood it, in that office they kept and maintained a blackboard on which was posted——

The Court: That is the office at Carrollton?

Mr. S. J. Jones: Yes, sir. Throughout the day the various changes of prices on the Board of Trade at Chicago, Kansas City, Minneapolis and Winnipeg, and that the markets, so posted relate to future deliver- market, the market, whatever you call it, like July, September and October grain, and that that blackboard was maintained there and those markets posted for the information of the customers of the Uhlmann Grain Company. I will make that statement.

Mr. Stinson: I don't know whether that is an admission or an assertion.

[fol. 73] The Court: You don't know whether you want to admit that, is that it?

Mr. Stinson: I think the plaintiff will answer Mr. Jones' admission, the admission that the quotation was posted on this blackboard in question during the period in question, reflected actual transactions.

Mr. S. J. Jones: We don't admit that.

The Court: You are not agreeing to that?

Mr. S. J. Jones: No, sir.

The Court: Of course, that may be disregarded. Of course, I don't know.

Mr. Stinson: Well, if the court please——

The Court: They are not asking for an admission of that sort.

Mr. Stinson: Well, we will supply—if that is not admitted we will supply it by proof. We are going to read Mr. McDonough's deposition.

The Court: I understand that limits the proof to the mere question of the contractual relations involved in these transactions, is that right?

Mr. Stinson: Yes, your honor.

The Court: As I understand, these objections go to all the accounts here, qualified, as you stated there, with respect to the admission?

Mr. Stinson: Yes, sir.

The Court: So it will not be necessary for you to go through the ledger for any account sued on and offer in evidence the ledger account.

Mr. S. J. Jones: No, sir.

The Court: I think that is very good. I think it will shorten the case and at the same time preserve your rights."

---

RICHARD UHLMANN testified for plaintiff as follows:

Direct examination:

I live in Chicago, Illinois; am Secretary and Treasurer of Uhlmann Grain Company; my father's name is Fred Uhlmann, and he is President of the Company and one of its organizers. The principal place of business of Uhlmann [fol. 74] Grain Company is Chicago, Illinois, and it has a branch office in Kansas City. In 1924 Uhlmann Grain Company was a member of four exchanges, Chicago, Kansas City, Minneapolis, and Winnipeg. There may have been others.

I am familiar with the methods followed generally by members of the Chicago Board of Trade and by Uhlmann Grain Company in transactions similar to those in question in these cases. I know how the various orders which have

been testified about, which came to Chicago from Kansas City were executed. The orders were executed in this way; The order, as explained yesterday, which had originated in Carrollton was relayed at Kansas City and thence to Chicago. A typical telegram which I hold would be copied by a wire operator. I am referring to Exhibit 9. A telegram from Kansas City would be copied by a telegraph operator in Chicago by the Uhlmann Grain Company. There was a private wire leased by Uhlmann Grain Company between Kansas City and Chicago in 1924. In the absence of wire trouble, they would always come over this private wire. The order would be received in our Wire Department and after being written by the telegraph operator would be handed to a boy who sat just opposite; that order would be telephoned to the exchange floor to a man sitting there and representing us. He, in turn, would copy that order and would have a boy run that order into the pit, there to meet an executive member of our firm or one of our brokers. The broker would make every effort to make this purchase at the bid price or from the cheapest seller. I, myself, a part of my duties are in the pit engaged in buying and selling these futures. If I succeeded in finding a seller at the price, I would merely write down the party from whom purchased in hieroglyphics or otherwise, and make a notation on the top of the house represented by the broker, the broker's name, so in the event of a dispute the trade could be fully traced. In the event it was a purchase, it would be jotted down on the original order. The order would be sent back to our telephone man on the exchange floor, and, in turn, would be routed back over the wire. After the transaction is consummated in the pit, a confirmation is exchanged between the brokers by our clerical force upstairs. Where a purchase and sale is executed on the Board of Trade, Exhibits 14 and 15 are typical of the records that are made by the contracting brokers of the transaction. They are a confirmation. On the Chicago Board of Trade Uhlmann Grain Company never deals in the purchase and sale of these commodities with anyone but a [fol. 75] member of the above Board. Uhlmann Grain Company was not a clearing member at Minneapolis or Winnipeg. These transactions are always actually executed by clearing members of the particular exchange. Where a transaction is to be executed in Minneapolis or Winnipeg, we simply wire

those orders to one of our correspondents in the market concerned. The correspondent would always be a clearing member of the exchange. And under the custom and practice of those exchanges, he would always deal with a clearing member. Immediately upon consummation of the trade we would receive telegraphic instructions stating the amount or price at which bought or sold and the following day when the mail would arrive we would receive a written confirmation. The first confirmation would be telegraphic and the day's mail would give the balance. Such a confirmation is plaintiff's Exhibit 16. I do not have a typical telegram which is an order on the broker in Winnipeg. We don't keep records of that because within 30 or 60 seconds we get a reply.

(Plaintiff offers Exhibit 16 in evidence. Defendants' counsel object to this offer upon the ground that there is no showing that the defendants or either of them was in any way connected with it; it does not prove or tend to prove any issue in the case as against the defendants, and is wholly irrelevant. The objection was overruled, defendants excepting at the time.

Defendants also object to Exhibits 14 and 15 of plaintiff, for the reason that it has not been shown that defendants were in any way connected with the transaction there mentioned and listed and referred to, and that they are not binding on defendants in any way. The objections were overruled, defendants excepting.

In connection with defendants' objections to the offer of these Exhibits 14, 15 and 16, the following occurred:

"The Court: In other words, you don't object to it on the grounds that such documents were not made up in connection with the transactions had with the defendants, but you say that the defendants had no knowledge of it and they are not connected with it, with the immediate transaction?

Mr. S. J. Jones: That is right. That is the objection.

The Court: Well, the objection will be overruled upon your theory here.

Mr. S. J. Jones: Exception."

[fol. 76] At the bottom of Exhibit 14 is the name, "P. B. Carey." P. B. Carey was a clearing member of the Chicago Board of Trade. He was on the opposite side of the transac-

tion with the Uhlmann Grain Company in the transaction respecting which this card is made. On the bottom of Exhibit 15 is the name, "Edward H. Bagley." He also was on the opposite side. Now these cards are made out by Bagley and Carey where they are on opposite sides in the deal in the pit with the Uhlmann Grain Company, and the Uhlmann Grain Company likewise makes out and delivers to them the same thing.)

Plaintiff's Exhibit 14 is as follows:

PLAINTIFF'S EXHIBIT 14

"Chicago, Nov. 15, 1924.

I hereby confirm Purchases made by me today under the rules of the Chicago Board of Trade, as follows, of

| Amount | Delivery | Uhlmann Kind of property | Price |
|---|---|---|---|
| 5 | D. | ..... | 153¼ |

P. B. Carey. Phones: Harrison 0290-0291."

Plaintiff's Exhibit 15 is of the same general character as Plaintiff's Exhibit 14.

Plaintiff's Exhibit 16 is a Western Union telegram, dated August 19, 1924, containing this language:

PLAINTIFF'S EXHIBIT 16

"Received at Chicago Board of Trade Office—Uhlmann Sold 10 Oct. Wht. 37¾ (Signed) Seaboard. 938 A "Gd" Winnipeg, Man.—Standard Time."

These confirmations mean: The figure 5 represents 5,000 bushels; the delivery D represents December; and the price, $1.53¼. On the sales confirmation, that is 5,000 bushels of December wheat sold at $1.25⅜. I am reading Exhibits 14 and 15. Assuming that these orders began in Carrollton, immediately the Kansas City office would be notified the purchase and sale price, and they, in turn, would relay that to Carrollton. Directing attention to Exhibits 9, if a ring or parenthesis goes around this order, being a sale order, that means that the operator in Chicago has reported the transaction to Kansas City. In reporting a transaction to Kan-

sas City where the order is executed on the Chicago Board of [fol. 77] Trade, Kansas City is notified of the name of the person who is on the other side of the transaction by written confirmation, but not by telegram. A typical written confirmation of this character is plaintiff's Exhibit 17.

(Plaintiff offers Exhibit 17 in evidence. Defendants object to it for the reason defendants are not shown to be connected with the transaction. The objection was overruled, defendants excepting.)

Plaintiff's Exhibit 17 is in words and figures as follows:

PLAINTIFF'S EXHIBIT 17

"Uhlmann Grain Co., Elevator-Commission-Export. 98.
"Board of Trade Bldg., Chicago, 5/17/28.
"R. Special.

"Uhlmann Grain Co.:

"We hereby confirm the following purchases made by us for your account and risk, subject to the rules and customs of the Chicago Board of Trade.

"Bushels, 10,000; Description, Sept. Wheat; Bought of J. Barrett; Price, 148⅜.

"Bushels, 5,000; Description, July Wheat; Bought of Bittell; Price, 148¾.

"We reserve the right to close all contracts without further notice whenever in our judgment the security in our possession has become inadequate.

"Yours very truly, Uhlmann Grain Co., per ——
——."

Exhibit 17 is typical of what would be sent by the Uhlmann Grain Company in Chicago to Kansas City, and it would show the number of bushels, the description, the delivery, and the price and the party with whom the contract was made?

Assuming that the transaction was closed in Winnipeg or Minneapolis, the confirmation from our broker there would show the other parties to the contract; but that information would not be relayed from Chicago to Kansas City. It would remain in Chicago. The difference is this: In Chicago transactions Uhlmann Grain Company at

Chicago would relay the name of the other party to the contract to Kansas City as well as keep a record of it there. In the Minneapolis transaction, in the Winnipeg transaction, the name of the other party to the contract [fol. 78] would be sent to Chicago, a record made of it there, but there would be no transmission back to Kansas City of these transactions. The reason Uhlmann Grain Company would employ a broker to represent it in Winnipeg and Minneapolis is that it was not at that time a clearing member of these exchanges.

In none of the transactions with these defendants did Uhlmann Grain Company act in any other way than shown by these written records.

(Defendants' counsel moved that this answer be stricken out for the reason that there is no record showing how they did it. Objection overruled.)

PLAINTIFF'S EXHIBITS 18, 19, AND 20

Plaintiff's Exhibits 18, 19 and 20 are the rules and by-laws of the Chicago, Minneapolis, and Winnipeg Grain Exchanges in force in the year 1924.

"Mr. Stinson: Plaintiff desires to make a general offer of these three rules books with the understanding that there shall be furnished only the sections that are pertinent asked for by either or both sides. In other words, I don't want to have to print the whole record and the other side will have the privilege of reading those sections."

In the Chicago rules, in Section 2 of Rule 23, reading as follows:

"In case any property contracted for future delivery is not received and paid for when properly tendered it shall be the duty of seller in order to establish any claim on the purchaser to sell it on the market at any time during the next 24 hours, at his discretion, after such default shall have been made, notifying the purchaser within one hour of such sale, and any loss resulting to the seller shall be paid by the party in default."

I know the rule which denies to a broker the right to take the other end of a transaction or trade with his customer, and denies to the broker the right to act as principal and

agent, or as agent for both parties to the transaction. I have that written on the back of the Winnipeg—showing the page number there. That would fall under Rule 4, Section 11, which reads as follows:

"No member of this association is allowed under any circumstances to be both principal and agent in any transaction in any of the commodities dealt in under the rules of the Board. Furthermore, no member of this association [fol. 79] in any transaction in any of the commodities dealt in under the rules of this Board shall allow himself directly or indirectly, either by his own act or acts of an employee or broker or other member of the association to be placed in the position of agent for both seller and buyer."

The other pertinent rules of these Exchanges in force at the time are as follows:

Chicago Board of Trade

Sec. 8. (Para. 2). "All orders received by any member of this Association, firm or corporation doing business upon the Board of Trade of the City of Chicago, to buy or sell for future delivery any of the articles or commodities dealt in upon the floor of the Exchange (except when in exchange for cash property) must be executed in the open market in the Exchange Hall during the hours of regular trading, and under no circumstances shall any member, firm or corporation assume to have executed any of such orders or any portion thereof by taking the trades, or any portion of any of them, for their own account, either directly or indirectly, in their own name or that of an employe, broker or other member of the Association. Any member convicted of violation of this rule by the Board of Directors shall be expelled."

Sec. 11. "No member of this Association is allowed under any circumstances to be both principal and agent in any transaction in any of the commodities dealt in under the rules of this Board. Furthermore, no member of this Association in any transaction in any of the commodities dealt in under the rules of this Board shall allow himself directly or indirectly, either by his own act or by the act of an employe or of a broker or other member of the Associa-

tion, to be placed in the position of agent for both seller and buyer."

Sec. 8. (Para. 1). "Any member of the Association who shall be interested or associated in business with, or who shall act as the representative of, or who shall knowingly execute any order or orders for the account of any organization, firm or individual engaged in the business of dealing in differences on the fluctuations in the market price of any commodity or corporate stock—without a bona fide purchase and sale of the article for an actual delivery; or who shall be a member of, or shall, in his own behalf, or as [fol. 80] agent, directly or indirectly make, execute, or give any orders for a trade or transaction in or upon any bucket-shop or any so-called exchange, wherein is conducted or permitted the business aforesaid, or who shall knowingly accept, either directly or indirectly, from any member of any so-called exchange, wherein is conducted or permitted the business aforesaid, any orders for trades or transactions to be executed in the Exchange Hall of this Association, shall be deemed guilty of unmercantile conduct, which renders him unworthy to be a member of the Association; and upon complaint to and conviction thereof by the Board of Directors, he shall be expelled from membership in the Association."

Rule XXII, Sec. 2. "On contracts for property deliverable at the pleasure of the seller, within a specified time, the seller may deliver the property on any day during such time, between the hours of 8:30 and 9:15 A. M., or between the hours of 2:30 and 3:00 P. M. or 1:30 and 2:00 P. M. on the last business day of the delivery month, as provided by Section 2 of Rule XXI."

Rule XXII, Sec. 6. "In case it shall appear that the delivery of any outstanding trade or contract between members of the Association may be offset by some other corresponding trade or contract, made by the parties with other members of the Association, and the parties to such trade or contract, or their authorized agents, consent to such offset, such trade or contract shall be deemed to have been settled, and any balance between the current market value of the property covered by such trade or contract and the several contract prices, shall be due and payable imme-

diately by the party from whom such balance may be due to the party entitled to receive the same under his contract. * * * In order to facilitate the operation of this section, each member is required to keep a settlement book in which shall be entered the names of parties with whom settlements have been made, and the dates and terms of the trades included in such settlement, and the terms of such settlements, and the prices at which the commodities were originally sold or purchased, and the amounts due to or from him or them on each separate settlement, also the net amount due to or from him or them on all settlements."

[fol. 81] Sec. 12. "Whenever a member of the Association, acting on his own behalf or as the representative of a firm or corporation, shall have made a purchase or sale for another party for future delivery of contract grades of commodities dealt in on the Exchange, such member or the firm or corporation of which he is the representative, as the case may be, shall notify the party for whom such purchase or sale was made, of the price at which and the party with whom such purchase or sale was made, such notice to be in writing and to be given upon the day of such purchase or sale."

Rule XXIII. "Failure to Deliver or Receive on Contracts.—Section 1. In case any property contracted for future delivery is not delivered at maturity of contract, the President shall appoint a committee of three from the membership at large, to be approved by the Board of Directors, which Committee shall determine as nearly as possible the true commercial value of the commodity in question on the day of the maturity of the contract, and the price so established shall be the basis upon which settlement is made.

It shall be the duty of the Committee in determining the true commercial value of the commodity under this Rule, to ascertain its value in other established markets, or for manufacturing or consumptive purposes, in this country, together with such other facts as may justly enter into the determination of its value.

As liquidated damage the seller shall pay to the purchaser not less than one percent nor more than ten percent of the value of the commodity as established by the Committee; the percentage, within said limits, to be such as,

in the judgment of the Committee, may be just and equitable.

Settlement shall be made without delay, and the damage as determined under the provisions of this Section, shall be immediately due and payable.

This section shall not be construed as applying to any parties having the property both bought and sold, in all of which cases settlement shall be made on basis of prices established by the contracts in such instances.

Sec. 2. In case any property contracted for future delivery is not received and paid for when properly tendered, it shall be the duty of the seller, in order to establish any [fol. 82] claim on the purchaser, to sell it on the market at any time during the next twenty-four hours, at his discretion, after such default shall have been made, notifying the purchaser within one hour of such sale; and any loss resulting to the seller shall be paid by the party in default."

Rule XXIII A. "Sec. 1. Every member shall make, or file, such report, and keep such record of his transactions as he is required to make, file or keep, by sub-clause (b) of Section 5 of the Act of Congress known as the Grain Futures Act, and if he shall fail to do so he shall be suspended by the board of directors from all privilege of membership until he shall comply with the said provisions of said act."

(Counsel for plaintiff and defendant agree that the sections and paragraphs of the Chicago Board of Trade Rules offered by both sides are typical of the rules of the other two exchanges Minneapolis and Winnipeg.)

Plaintiff's Exhibits 21, 22, 23 and 24 are confirmations of trades that have originally been reported by telegraph from our correspondents at either Winnipeg or Minneapolis.

Plaintiff offers Exhibits 21 to 24, inclusive, in evidence.

During the year 1924, there was a representative or supervisor of the Federal Government and of the so-called Grain Futures Administration to which records were made from day to day of these transactions.

Defendants object to Exhibits 21 to 24 inclusive, on the ground that they do not show any connection whatever with the defendants or either of them, or the various transactions cited on the several Exhibits; on the further ground that they do not prove or disprove any issues in the case, and are wholly incompetent. The objections were overruled, defendants at the time excepting.

(Plaintiff's Exhibits 21 to 24, inclusive, are all typical. Exhibit 21, the first page thereof, is a confirmation by R. B. McClean Grain Co. Ltd., Grain Exchange, Winnipeg, Man.; plaintiff's Exhibit 22 is a confirmation by Seaboard Grain Company, Limited, Grain Exchange, Winnipeg, Man.; plaintiff's Exhibit 23 is the confirmation of Brown Grain Co., Commission Merchants, New Chamber of Commerce, Minneapolis, Minn.; plaintiff's Exhibit 24 is the confirmation of Cargill Commission Co., 1104 First National-Soo Line Bldg., Minneapolis. The first pages of each of these Exhibits is in words and figures as follows:)

6M—1/24

All Purchases and sales made by us for you are made in accordance with, and are subject to the rules, By-laws, regulations and customs of the Winnipeg Grain Exchange, and also those of the Winnipeg Grain and Produce Exchange Clearing Association.
This trade has been, or may be, cleared through the said Clearing Association, and on being so cleared we will be the only person to whom you can look for the carrying out of this trade.

OFFICE OF
R. B. McCLEAN GRAIN CO., LTD.
GRAIN EXCHANGE

Winnipeg, Man. Aug 27 192 4

To Hermann Fra Leon
Chic

We confirm the following transactions made for your account and risk today:

| PURCHASES | | | SALES | | |
|---|---|---|---|---|---|
| 5 | Oct Wht | 126¼ | 5 | Oct Wht | 125¼ |
| 5 | " | 125¼ | | | |

Pltfs Ex. 21
OSH

PLAINTIFF'S EXHIBIT NO. 21
(First Page)

83-84

PLAINTIFF'S EXHIBIT NO. 22
(First Page)

**SEABOARD GRAIN COMPANY, LIMITED**
GRAIN EXCHANGE

**Nº 454**

To The Ishbran Grain Co Winnipeg, Man. Aug 21 1924

87 Board of Trade Chg

**In Compliance with your instructions, we have this day for your account and risk:**

| BOUGHT | | | | | SOLD | | | | |
|---|---|---|---|---|---|---|---|---|---|
| AMOUNT | DELIVERY | ARTICLE | PRICE | FIRM NAME | AMOUNT | DELIVERY | ARTICLE | PRICE | FIRM NAME |
| | | | | | 25.000 | Oct | Wht | 136 5/8 | 10 Alb Pac 15 Land |
| | | | | | 5.000 | " | " | 136 1/2 | A. Jr |
| | | | | | 10.000 | " | " | 136 7/8 | 5 Sell 5 K BS |
| | | | | | 10.000 | " | " | 137 | 5 alb Pac 5 2.0. |
| | | | | | 20.000 | Dec | Oats | 57 7/8 | 10 McL 10 Can adl |
| | | | | | 10.000 | " | " | 57 5/8 - 3/4 | 5 A B 5 Can adl |
| | | | | | 20.000 | " | " | 57 5/8 | A Banff |
| | | | | | 10.000 | Oct | Wht | 135 5/8 - 3/4 | 5 Hud 5 Land |

Pltff's Ex. 22
OBM

**IT IS AGREED BETWEEN BROKER AND CUSTOMER:**

1. That all orders for the purchase or sale of any commodities are received and executed with the distinct understanding that actual delivery is contemplated, subject to the rules, regulations and customs of the Exchange or Market where the trades are made and the rules, regulations and requirements of its Board of Directors, and all amendments that may be made thereto.
2. We also reserve the privilege of substituting other responsible parties as principals with you at any time in accordance with the rules of the Exchange where the trades are made, and to clear all transactions, through Clearing Associations, if there be any from day to day, in accordance with the usage prevailing at that time.
3. We reserve the right to close out at our discretion time contracts made for your account without further notice when margins are exhausted or so nearly so in our judgment, as to endanger the account, and to settle contracts in accordance with the rules and customs of the Exchange or Market where the order is executed.

E. & O. E.

**SEABOARD GRAIN COMPANY LIMITED**

PLAINTIFF'S EXHIBIT NO. 23
(First Page)

# BROWN GRAIN CO.

COMMISSION MERCHANTS
NEW CHAMBER OF COMMERCE

Minneapolis, Minn., 6-20 1924

Johnson Grain Co

We have the pleasure of confirming the following transactions made for your account and risk today Duluth market:

| QUANTITY | BOUGHT OF | | ARTICLE | PRICE | QUANTITY | SOLD TO | | ARTICLE | PRICE |
|---|---|---|---|---|---|---|---|---|---|
| 5 | Ashes | 917 | Dec wht | 129 4 | 10 | McCaull | | Dec wht | 129 5/8 |
| 5 | Gregory | — | " | — | 20 | Ashes | | " | 128 3/4 |
| 5 | Bartlett | 918 | " | " | 10 | Howard | 801 | " | 128 7/8 |
| 5 | Howard | — | " | " | 20 | Stevenson | 910 | " | 129 1/2 |
| 15 | Van Dusen | 850 | " | 128 3/8 | 5 | Eckwood | 931 | " | 129 |
| 5 | Ashes | 846 | " | 128 3/8 | 2 | Howard | 936 | " | 129 3/8 |
| 5 | — | — | " | 129 | 5 | Hopewood | 911 | " | 129 |
| 10 | Howard | — | " | — | 15 | Eckwood | 1000 | " | 128 1/2 |
| 5 | Johnson | 850 | " | — | 15 | Stevenson | 1007 | " | 128 3/8 |
| 5 | Ashes | — | " | — | | | | | |
| 10 | Elwood | | " | 128 3/8 | | Pfffe 23 | | | |
| 10 | Lamm | 803 | " | 129 | | 1,004 | | | |
| 25 | Howard | 904 | " | 129 3/8 | | | | | |

"It is understood that all transactions made by us for your account contemplate actual receipt and delivery of the property and payment therefor, and that all property sold for your account is sold upon the representation that you have same in your possession, actually or potentially. These transactions are made subject to the rules and customs of the exchange on which they are made, and the right is reserved by us to close transactions without further notice if margins on deposit with us are exhausted, or are inadequate in our judgment to protect us against fluctuations."

BROWN GRAIN CO.

Per

PLAINTIFF'S EXHIBIT NO. 24
(First Page)

It is understood that all transactions made by us for your account contemplate actual receipt and delivery of the property and payment therefor, and that all property sold for your account is sold upon the representation that you have same in your possession actually or potentially. These transactions are made subject to the rules and customs of the Exchange on which they are made, and the right is reserved by us to close transactions without further notice if margins on deposit with us are exhausted or are inadequate in our judgment to protect us against fluctuations.

**CARGILL COMMISSION CO.**

1104 FIRST NATIONAL-SOO LINE BLDG.

MINNEAPOLIS, 8-21-24

Uhlmann Grain Co
Chgo

WE HAVE THIS DAY MADE THE FOLLOWING TRANSACTIONS FOR YOUR ACCOUNT AND RISK: E. & O. E.

| BOUGHT | | | | | | SOLD | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| QUANTITY | MARKET | DELIVERY | COMMODITY | PRICE | OF WHOM | QUANTITY | MARKET | DELIVERY | COMMODITY | PRICE | TO WHOM | TIME |
| M | | | | | ✓ | 10M | Mpls | DD | wht | 134 3/8 | LVCCo | 9:45 |
| " | | | | | ✓ | 10" | — | — | — | 134 3/8 | Greg | |
| " | | | | | ✓ | 5" | — | — | — | 134 3/8 | Wilson | |
| " | | | | | | 5" | — | ND | — | 134 3/8 | Loh | |
| " | | | | | | 5" | — | — | — | 134 3/4 | — | |
| " | | | | | | " | | | ✓ | | | |
| " | | | | | | " | | | | | | |
| " | | | | | | " | | | | | | |
| " | | | | | | " | | | | | | |
| " | Pffs Ex. 24 | | | | | " | | | | | | |
| " | | | EEM | | | " | | | | | | |

[fols. 91 & 92] These Exhibits 21 to 24 are some records in the year 1924 which I have showing from whom purchased or to whom sold, the other brokers contracting in that market. They show the price, delivery, and person to whom sold; also the quantity. When I say "person to whom sold or from whom bought," I mean the other party to the transaction on the Exchange.

Plaintiff's Exhibits 25 and 26 are reports we were required to make to the United States Department of Agriculture showing each commodity dealt in, and the net quantity under or short. These are actual reports made by Uhlmann Grain Company to the Grain Futures Administration during the year 1924. They were made out on forms prescribed by the Grain Futures Administration, and I see a notation here that the grain exchange supervisor had sanctioned them.

(Plaintiff offers in evidence plaintiff's Exhibits 25 and 26. Defendants object on the ground that defendants are in no way connected with them, that they are not binding upon defendants as far as the issues in this case are concerned, and that there are no facts or figures cited in them that there was any knowledge on the part of the defendants. The objection was overruled by the Court, defendants at the time excepting.)

Plaintiff's Exhibits 25 and 26 are in words and figures as follows:

Form 101-G. F. A.

# UNITED STATES DEPARTMENT OF AGRICULTURE

GRAIN FUTURES ADMINISTRATION

717 POSTAL TELEGRAPH BUILDING, CHICAGO

Harrison 4500

189

REPORT OF Uhlmann Grain Co (Name or number) FOR Dec. 1, 1924 (Date)

BOARD OF TRADE OF THE CITY OF CHICAGO

| GRAIN | DELIVERY MONTH | AGGREGATE OF ALL "LONG" AND OF ALL "SHORT" OPEN ACCOUNTS: AGGREGATE LONG | AGGREGATE SHORT | | |
|---|---|---|---|---|---|
| WHEAT | MAY | 719 | 6262 | | |
| | JULY | 633 | 65 | | |
| | SEPT. | 0 | 0 | | |
| | DEC. | 335 | 373 | | |
| CORN | MAY | 270 | 539 | | |
| | JULY | 57 | 210 | | |
| | SEPT. | 0 | 0 | | |
| | DEC. | 54 | 121 | | |
| OATS | MAY | 60 | 10 | | |
| | JULY | 2 | 0 | | |
| | SEPT. | 0 | 0 | | |
| | DEC. | 25 | 20 | | |
| RYE | MAY | 88 | 202 | | |
| | JULY | 45 | 0 | | |
| | SEPT. | 0 | 0 | | |
| | DEC. | 0 | 2 | | |
| BARLEY | MAY | | | | |
| | JULY | | | | |
| | SEPT. | | | | |
| | DEC. | | | | |

NET POSITION OF ACCOUNTS DESIGNATED UNDER SEC. 2, PAR. "f" OF REGULATIONS

| ACCOUNT (NUMBER OR LETTER) | LONG | DELIVERY MONTH AND GRAIN | SHORT |
|---|---|---|---|
| | | | |

I hereby certify that this report is a true statement of the transactions and positions in futures on this exchange for the Uhlmann Grain Co. as of the close of business Dec. 1st 1924 - as shown by records in this office.

By Ellis Fitz
Grain Statistician

REMARKS:

PLAINTIFF'S EXHIBIT NO. 25

95-96

Form 101-G. F. A.

# UNITED STATES DEPARTMENT OF AGRICULTURE

190

GRAIN FUTURES ADMINISTRATION

717 POSTAL TELEGRAPH BUILDING, CHICAGO

Harrison 4588

REPORT OF #753 (Name or number) FOR 3-31-27 (Date)

BOARD OF TRADE OF THE CITY OF CHICAGO

| GRAIN | DELIVERY MONTH | AGGREGATE OF ALL "LONG" AND OF ALL "SHORT" OPEN ACCOUNTS — AGGREGATE LONG | AGGREGATE SHORT | NET POSITION OF ACCOUNTS DESIGNATED UNDER SEC. 2, PAR. "f" OF REGULATIONS — ACCOUNT (NUMBER OR LETTER) | LONG | DELIVERY MONTH AND GRAIN | SHORT |
|---|---|---|---|---|---|---|---|
| WHEAT | MAY | 1035 | 2787 | | | | |
| | JULY | 1376 | 700 | | | | |
| | SEPT. | 1349 | 170 | | | | |
| | DEC. | | | | | | |
| CORN | MAY | 517 | 106 | | | | |
| | JULY | 64 | 1185 | | | | |
| | SEPT. | 184 | 130 | | | | |
| | DEC. | | | | | | |
| OATS | MAY | 599 | 577 | | | | |
| | JULY | 114 | 345 | | | | |
| | SEPT. | 80 | 230 | | | | |
| | DEC. | | | | | | |
| RYE | MAY | 493 | 86 | | | | |
| | JULY | 48 | 45 | | | | |
| | SEPT. | 61 | 41 | | | | |
| | DEC. | | | | | | |
| BARLEY | MAY | | | | | | |
| | JULY | | | | | | |
| | SEPT. | | | | | | |
| | DEC. | | | | | | |

REMARKS:

PLAINTIFF'S EXHIBIT NO. 26

[fol. 97] These reports are typical of daily reports that were made by the Uhlmann Grain Company to the Grain Futures Administration in Chicago during that year, 1924. These transactions executed in Chicago for these defendants, are included in the transactions in the report. The same practice is followed in Minneapolis.

Exhibit 27 is a telegram which I got this morning signed by the Secretary of the Chicago Board of Trade. It is an answer to one which I sent.

(Plaintiff offers its Exhibit 27 in evidence. No objection.)

Said Exhibit is in words and figures as follows:

PLAINTIFF'S EXHIBIT 27

"Chicago, May 21, 1928.

R. F. Uhlmann, Kansas City, Missouri.

We advised Uhlmann Grain Company under date February sixteenth nineteen hundred twenty four Stop We have this day transferred the name of E. S. McDonough registered solicitor for M. L. Vehon and Company on our records as a solicitor in your employ signed membership committee. Stop McDonough's address that time was Florence Hotel, Carrollton, Missouri.

Fred H. Clutton, Secretary, Chicago Board of Trade."

There is a rule of the Chicago Board of Trade with reference to employees and solicitors of members. It is Rule 4, Section 33, and it states:

OFFER IN EVIDENCE

"The employment by members of all persons soliciting orders for the purchase or sale of property for future delivery upon this Exchange, or for the purchase or sale of property to be shipped to this market or for the consignment of property to this market for the purpose of sale, or, for the disposition in any manner of property dealt in upon this Exchange, shall be in accordance with regulations established and promulgated by the Board of Directors. All persons soliciting the business above described shall be divided into

two classes, first, 'Solicitors,' second, 'Brokers.' Solicitors, whether members of this Association or not, shall include all persons who give their entire time and services to one employer at a fixed salary. A broker under this rule——"

Mr. McDonough gave his entire time to Uhlmann Grain Company and was approved.

In the year 1924, Uhlmann Grain Company paid the Chicago Board of Trade for the privilege of relaying to Car- [fol. 98] rollton the quotations that were put on the blackboard in Carrollton. To my knowledge they paid the Chicago Board of Trade and possibly other grain exchanges. They paid $7.50 a month for the privilege of using Board of Trade quotations. These transactions get on the blackboard in the ordinary course of business in this manner. They were merely telegraphed over the ticker which had been installed in our wire room at Kansas City, and each quotation showed the last trade in the commodity dealt in in the pit.

Grain Clearing Corporation in Chicago operated in 1924 in this manner: After the transaction had been made in the pit, the purchaser had confirmed to the seller, and the seller to the purchaser in accordance with the card we have submitted, then we entered the transaction on our ledger and we showed to the clearing house at that time just exactly what price which we had sold the commodity at, and the price we had purchased. This record is typical. I am referring to plaintiff's Exhibit 28. Exhibit 28 is our own record, showing the broker who had made the transaction, and he has designated here the party from whom bought or to whom sold, the price at which the transaction had been made, also the war tax, and the number of the customer, i. e., the number of our own customer. The report would not give the number of the other man's customer. It gives the date. This is simply another record made by the Uhlmann Grain Company of those transactions executed on the Chicago Board of Trade for our customer. The records of the Carrollton customer for whom trades were executed on the Chicago Board of Trade would not be made here directly. It would be made for the Uhlmann Grain Company at Kansas City, which, in turn, marked it for the customer. The record in Chicago would merely designate

Kansas City by its own number, and Kansas City would keep the individual record.

(Plaintiff offers its Exhibit 28 in evidence. Defendants make same objection, objection was overruled, defendants at the time excepting.

PLAINTIFF'S EXHIBIT 28

Plaintiff's Exhibit 28 is a large sheet. It is headed Uhlmann Grain Company, 87 Board of Trade Building. No. 212 Sales of 5,000 bushels. Contract Wheat for Dec. 1924 delivery.

"The contracts here recorded were made on the Chicago Board of Trade. The address of contracting parties, Chicago.

[fol. 99]

| Date | Name of broker | To whom sold | Acc't ren'd | Price | Tax paid | Cus. | Ring No. | Date |
|---|---|---|---|---|---|---|---|---|
| 11-14 1924 | 15 | Newman | 773 | 155¾ | 78 | 73 | 10 | 11-19-1924" |

The entry above designated is typical of fifty recorded on the sheet on November 14, 1924, and November 15, 1924. The opposite side of the sheet contains the following:

Uhlmann Grain Company, 87 Board of Trade Building. No. 213

Purchases of 5,000 bushels Contract Wheat for Dec., 1924, Delivery

"The contracts here recorded were made on the Chicago Board of Trade. The address of contracting parties, Chicago."

A typical item or entry is as follows:

| Date | Name of broker | From whom bought | Acc't ren'd | Price | Tax paid | Cus. | Ring No. | Date |
|---|---|---|---|---|---|---|---|---|
| 11-18 1924 | 36 | Lewis | 906 | 152⅝ | .... | 325 | 8 | 11-19-1924 |

In 1924 the Clearing House did not start to function until the trade was closed. In other words, each individual trade was directed by the broker and he had the right to call us and we had the right to call him for ten per cent of

the margin equivalent, ten per cent of the commodity price. In other words, if wheat were $1.50 at that time, the broker who we had at that time would call us 15 cents per bushel until such time as the trade was closed. During this year, if Uhlmann Grain Company was indebted to a broker with whom it dealt, we would make a notation of our closeouts. We would then make a check to the clearing house for the amount of the loss sustained and after the market difference had been settled, whatever we had up with the broker would be collected. In 1924 the rule was a little different than it is now. Wherever at the close of a business day we owed the broker with whom we dealt, why, we would put up a margin with some bank and that slip would be delivered to the broker and that transaction closed. If we owed that broker money, we would pay the clearing house and the clearing house would, in turn, pay the broker and then we took our margin down. At the present time we deal with the clearing house as they do in Kansas City. These transactions were all executed in our own name; and we were behind them and put up the margin wherever necessary to [fol. 100] protect the transaction. When orders were executed in outside markets it was generally customary for us to leave a reasonable balance, or if the trades went against us, they were in the habit of calling us anywhere from 1 to 4 or 5 cents per bushel to protect those trades. In other words, we put up our margin with our own broker there. This is the method by which all of these transactions were carried out.

(Counsel for plaintiff agreed that it may be understood that counsel for defendants is objecting to this line of testimony and excepting to its admission in evidence by the Court. In connection with the objection of defendants, the following occurred:

"The Court: Gentlemen, you are getting right back to the very place I have been trying to get away from all the time. If we have to go back over all this individual proof, I understood that was all waived.

Mr. S. J. Jones: Yes, your Honor, that is all waived.")

In all of these transactions, everyone of them included in these five lawsuits, there is nothing in any of these items for

which recovery is sought by the Uhlmann Grain Company which represents anything other than advances made by the Uhlmann Grain Company in these transactions. The Uhlmann Grain Company is out of pocket all of the money we are attempting to recover here except the commissions.

Cross-examination:

When I said the other broker had a right to call on us for ten per cent, I meant that if during the day's transactions we had sold 10,000 bushels of wheat at $1.50, and the market, assuming it had advanced 5 cents to $1.55, it would incur a $500.00 loss, and they would have collected in addition to the actual loss an amount 15 cents over and above that price, by virtue of a rule of the Board of Trade.

Now that would be a deal between brokers, we at one end and another broker at the other.

"Q. And in that transaction, these defendants had no connection whatever, did they?

* * * * * * *

A. I would say they had very much connection. We might have been obligated to put up a sum of money to protect that trade, which if the trade had been made we would not have laid out."

[fol. 101] These are transactions between us in behalf of our clients.

"But the name of that client was not disclosed, was it?

* * * * * * *

A. We generally knew who this customer was. We had the account number in each case on the order. We generally required a margin of our customer. There were times when we did not. That was generally at the disposal of our Kansas City office. If they thought a person's credit was sufficiently good or that he may have been trading in small quantities where the money could easily have been obtained, we waived it. The same was true of Carrollton.

Q. Mr. McDonough had that authority, didn't he?

A. I don't believe, entirely."

Mr. McDonough was the representative of the plaintiff at Carrollton. He was put there primarily to represent us; and he did represent us for six or eight months; and it came within his line of authority to solicit business for us; and he did that. I am not qualified to say whether he required margins in all cases. I think in most instances he did; in a great many instances. I am not qualified to say what margins were required of our customers at Carrollton. I would imagine anywhere from 2 to 5 cents per bushel on wheat. If the market went against us in those instances, the broker we had bought from or sold to had a right to call on us for 10 or 15 cents per bushel. And we put that up.

"Q. So you were dealing in margins between each other?
A. We didn't consider it dealing in margins. We were simply dealing in grain and protecting each other.
Q. That is right. And that was the constant practice at that time, wasn't it?
A. In a general way."

Referring to the Exhibit identified by me, no name of any of these defendants is mentioned on any of them. We simply gave them as typical examples. It would have involved a great deal more work to get just those transactions simply giving the name of the Carrollton people. These records of 1924 are all intact and it probably would have been four or five days' work digging in a vault to identify each order with an individual and our ledger shows that clearly.

"Q. But if you had gotten those, they would have been like these, they would not have been connected?
A. Yes, sir.
Q. And that is absolutely true?
A. Yes, sir.
[fol. 102] Q. And the records so far as you have been shown so far fail to connect the name of a single one of these defendants with a single transaction?
A. Not exactly the name."

I am familiar with the office at Carrollton in a general way. There were no other towns like Carrollton in which we had offices.

In these orders telegraphed to Kansas City and relayed to Chicago, some of these men may have obligated themselves to sell 50,000 bushels of wheat at one time; I don't think it was the general practice. I could not state whether or not any of them contracted to sell that much, or whether they were in any way qualified. I was one of the directing heads of the plaintiff in Chicago. I went into the pit and carried on some of these transactions. I did not inquire to find out whether the men who sold 50,000 bushels of wheat had it to sell; that was not under my jurisdiction; I was selling orders. I knew some of the businesses of those for whom I was dealing. I did not personally make any inquiry to find out about their financial ability to make their transactions good; our firm did. As to these defendants, one of our executive members, Mr. Paul Uhlmann, our Vice President, inquired through the bank. I know this only from hearsay. He has always been truthful with me.

In our dealings with our Carrollton customers, they knew that they would obligate themselves in the event of a loss; we called on these Carrollton people to put up margins when they lost. This they did in some instances. We ascertain what was coming to them when we made settlement with them by the difference between the credits and debits. Their profit or loss was ascertained by the difference in market at the time of closing each trade, that is, the difference between the market as it was at the time the contract was made and what it was sold out at. In regard to that provision in these Exhibits offered in evidence that we reserve the right to close out those trades when margins run low, we exercise that right, and we ourselves determine whether or not we will close out the transaction. We give our customer a notice of it in those instances. We have given those people every opportunity, and I will say that our close-outs have been only in a minority of instances. The statement on these bills that we reserve the right to close them out without notice is a legal formality.

An "offer" is the new name for what used to be termed a "call". Bids and offers fell in the classification of privi- [fol. 103] leges. I will say it is one of the oldest functions of a futures market. It is nothing more or less than an insurance plan. The privileges can be either bought or sold. The farmer very often will make up his mind if wheat goes to $1.50 he will sell, and he might sell for two months at that

figure, and assuming his crop will be 10,000 bushels he clears $10.00 each day until that wheat is sold and when it reaches $1.50 he automatically becomes a seller.

I might even amplify that by saying that my father instituted and introduced privileges on the Exchange 50 years ago in Brussels, and it is used in a number of commodity and future exchanges now, and was reintroduced on the Chicago Board of Trade to eliminate speculation. This was done under sanction of the Government, and the stipulation appears which was broken down by the Government under the Capper-Tincher Law.

On one of these Exhibits where the item "30 offers" opposite which are the figures $27.28 in one case, and $27.26 in another, and $27.27 in another, they mean this: That the customer in each instance had sold 30 offers; these were daily offers and the customer was remunerated to the extent of $27.27. The remuneration came from the buyer. The buyer was some person in the pit, the same as any other buyer. Very often grain was delivered on those orders; but I could not tell whether any was delivered in this case. I will say this: That if offers were sold there was a pending option which might very often be sold. Those were probably in futures. After this item of 30 offers, the seller would be liable to sell at the price at which he had contracted 30,000 bushels of futures. I mean by that that 30,000 bushels could be called for at that price. Those offers are generally dealt in at a figure anywhere from a cent and a half to five cents above the closing price of the previous day. One offer means a thousand bushels. In an offer the buyer of the contract has the option of calling at his discretion, if the price has been reached, and it is likewise the practice of people who sell offers, assuming, for instance, that a man would be the owner of 10,000 bushels of May wheat at 50 cents, he would sell offers for 53 and on the following day he would receive remuneration for insuring the buyer, and if the price of $1.53 were reached he would become a seller.

If I were given 30 offers, that would be 30,000 bushels of wheat. If I were a buyer the advantage which could accrue would be this: I might want to offer grain through the night on the basis of today's market, and I might not [fol. 104] get my reply until two hours after the opening. I would get the market for the entire day to base my trans-

action on, and if the market should go above that level for a time I could still book the sale. It is used that way for the same purpose where we are buyers or sellers as the case may be. If I have been given an offer today, we will say, that would mean I would sell 30,000 bushels of wheat on tomorrow's market if I demanded it. And whether I demanded it or not would probably depend on which way the market went. If it went up I would want it. If it went down I might not want it, but I might. I might buy a larger quantity of offers than I felt wheat could be bought in at the pit, and I might even take those offers if they were half a cent below closing price simply as a precaution to myself. I might be willing to stand a half-cent loss simply to get a larger quantity than I thought could be traded in the last moment on the Exchange which would be a trading benefit to you as well as to myself.

"Q. Then it all depends on the turn of the market, doesn't it?

A. Mostly, yes."

We have a vast number of customers over the country. We probably have 400 or 500 active accounts. They are scattered all over the grain territory; and abroad, and they are people in all walks of life, I presume. We publish daily a grain letter which appears in the Journal of Commerce and the Journal of Commerce, I presume, is a fairly large publication, and a great many people are apt to read it. We very seldom write letters, but occasionally we do. In these letters we might advise our customers about trading. We sometimes suggest that they lay off in July, for instance, and get on in September. We do it for this reason. In this business you can only keep your hedging trade or other customers if you try to be honest with them and give them the best advice at your disposal. The ultimate scheme of the advice is to make money out of it for our customers. And we advise them which market we think will advance the most if they are on that side. We try not to take stands; we are as impartial as we can be. We try to simply state facts. And it might be that we couple these facts with our advice and opinion. We give statistics and data and we might form a conclusion. In the grain area around Kansas City, Chicago and Minneapolis,

I would say we had possibly 300 customers. Among them many might be inactive customers. I mean by "inactive", for instance, Washburn-Crosby. For instance, if they would hedge in December, or assume they would pass there and wait until May to take delivery, they would be an inactive account. That would be margining their account un-
[fol. 105] til delivery. They are a milling firm. Customers like these defendants, I think that it was stated yesterday by Mr. Rowe, that there were about 50 at Carrollton. I think most of them were in Carrollton.

It is hard to state what percentage of grain contracted for is delivered. I can give you an example. This is May and I would say in Chicago 400 to 500 million bushels will be tendered of new grain and a great deal of that is redelivered. I could not approximate what percentage contracted for is delivered.

These people at Carrollton sold on three Broads of Trade through us, Chicago, Minneapolis and Winnipeg. I am not able to tell—the Exhibits will show—how much of that was dealt in at Chicago.

Referring to Exhibit 25 and directing attention to the column on the left under "September" the reason under the month of September there are no figures but ciphers, is that there are only, as a rule, two active trading months. May is now, and December has just been passed, and there might be days when we don't trade in a bushel. The trade is small but will grow as times of maturity approach. I mean by that as we draw near to the option month. December is a long ways off. We are trading now in July and September which are the two active months. Of all the grain dealt in by these defendants at Carrollton, not a bushel was ever delivered, I do not believe.

"Q. And all the settlements were made in the manner you have stated by taking the difference between the market price as contracted and at which it was closed out?
A. Yes, sir."

Redirect examination:

When these transactions were closed out, if it was an original purchase they would be closed out by a sale. When a transaction originated in a purchase, when that was sold later, closed out, the records were made in the same way

as a purchase was done. The market quotations would determine the price at which the commodity was purchased, and it would also determine the price at which it was sold.

"Q. There wouldn't be a settlement of difference on market quotations without an actual purchase and sale involved?

A. Never."

[fol. 106] Recross-examination:

I have a copy of the Kansas City Board of Trade rules.

(Here plaintiff offers in evidence copy of these rules. Said document was marked plaintiff's Exhibit 29.)

We buy grain from another broker. He is a broker that deals on the Exhange which we deal on. We do not inquire whether or not he has the wheat on hand. His principal puts up a margin. He might be acting for himself. So far as our dealings with the Carrollton office is concerned, I think in most cases the money required to be put up by defendants was to reimburse us for money we had previously paid out. When a man starts in, we would require a margin. Probably ten per cent, because you take the delivery and the bank would require that as collateral against the grain deal. I might make terms and ask less, but I would say that ultimately it would require ten per cent if you took a delivery of a commodity. That is what the banks require of us on grain collateral. The purpose of requiring our customers to pay 2½ cents per bushel is two-fold: It is a protection to us, and we want the margin to come to us the same as we pay them to others. One of the reasons might be that it protects us against fluctuations in the market. Other reasons are, I have tried to make it clear that we have to put up a certain amount with the other broker if we want to continue to do business. We can't finance the entire engagement on our own capital. We must get the money from our customers.

Witness excused.

("Mr. S. J. Jones: There seems to be a misunderstanding between counsel about that admission I made a little bit ago; that I was admitting all those were valid transactions.

The Court: I didn't so understand. What you did admit was that the transactions occurred so that there was an account credited, that is, a ledger account, but you challenge the validity of it.

Mr. S. J. Jones: That's right.

The Court: There is no admission of the validity.")

---

W. F. Logan testified in behalf of the plaintiff, as follows: I live in Kansas City. I am connected with the Grain Futures Administration of the Federal Government at [fol. 107] Kansas City. I am in charge of the Kansas City office. I work under the Department of Agriculture, Secretary of Agriculture. I am engaged in administering for the Government of the United States and the Secretary of Agriculture, the Grain Futures Act of 1922. In the year 1924 I was Assistant in a similar capacity in the City of Chicago. That is to say, in 1924 I was Assistant Supervisor of the Grain Futures Administration of the Government of the United States in connection with the activities of the Board of Trade of Chicago. I came to Kansas City as supervisor about January 1, 1925.

Plaintiff's Exhibit 30 is a copy of the general regulations promulgated by the Secretary of Agriculture with respect to contract markets, in force in the year 1924.

Said document was offered in evidence by plaintiff.

Objection by the defendants.

Objection overruled.

Defendants excepted.

In the year 1924 there were rules promulgated by the Secretary and printed in this book, having to do with the reports to be made by members of these contract markets and by the Grain Clearing Corporation. I will read from the rules on this subject:

Plaintiff's Exhibit 30

"A. (Reading:) Such report shall show separately for each kind of grain and each delivery month the following facts:

"(a) The net position at the beginning of the period covered by the report;

"(b) The quantity of grain purchased and the quantity of grain sold on such contract during the period covered by the report;

"(c) The quantity of grain delivered and the quantity of grain received on such contract during the period covered by the report;

"(d) The net position at the end of the period covered by the report;

"(e) The aggregate of all 'long' and the aggregate of all 'short' accounts carried at the end of the period covered by the report by the clearing member for whom the report is made; and

"(f) The net position, at the end of the period covered by the report, of each separate account carried by such clearing [fol. 108] member when such net position equals or exceeds such amount as shall be specified in a written notice from time to time by the Grain Futures Administration to such contract market.

"For the purposes of item (f) a distinguishing designation shall be used instead of the name of any person, but the name and address of such person shall be given upon request to a representative of the Grain Futures Administration authorized for the purpose by the officer in charge thereof. Such designation shall always be used for the same person and not for any other person and may be changed only by or with the approval of such representative."

In the year 1924 certain forms were given on the Chicago Board of Trade to its members. They were provided by the department for those members who were clearing members, and to the clearing house itself to be filled out by the members of the clearing house.

Plaintiff's Exhibits 25 and 26 are typical of the forms provided by our office to be filled out by the clearing members. Mr. L. A. Fitz is the grain supervisor in Chicago now. He held that office when I was his assistant in Chicago. These two reports, plaintiff's Exhibit 25 and 26, complied with our requirements at that time. In the year 1924 we did not require the member of the exchange making reports to show the name of its customer, unless the transaction exceeded

one-half million bushels. We received a report from Uhlmann Grain Company regularly in the year 1924. They were in good standing with the department; and they made the daily reports that were required by the Department of Agriculture. I am familiar with the general method of administrating the Grain Futures Act by supervisor, such as myself, in Minneapolis and other contract markets in the year 1924. The requirements of the department with reference to the reports and how *have* are to be made, are typical on the Chicago Board of Trade and were in 1924. There are just the same rules on each exchange.

(At this point counsel for defendants again admits that at the time, in 1924, the Chicago Board of Trade, the Minneapolis Chamber of Commerce, and the Kansas City Board of Trade, had been designated as contract markets by the Secretary of Agriculture.)

In 1924 in Chicago the department, whenever it saw fit, went into the books and examined the books of the clearing members of the Chicago Board of Trade. We had access to them and supervision over the inspection of them when- [fol. 109] ever we so desired. And we exercised that privilege on several occasions. Mr. Duvall is our chief in Washington. The Grain Futures Administration is in the habit of making annual reports.

Plaintiff's Exhibit 31 is an official copy of the report for the year 1924 of the Grain Futures Administration.

Our supervision, as we have exercised it in Chicago, is over transactions in grain futures on contract markets. We are acting only under the provisions of the Grain Futures Act of 1922. Our activities do not include an investigation of the character and standing of members of the exchanges. We admit the whole exchange as a contract market. But we do see to the enforcement of the Grain Futures Act and of the rules promulgated by the Department of Agriculture pursuant to it. In a general way, that is the scope of my duties. In 1924 I did not receive daily reports from the clearing house, just from the clearing members. The reports made by the Uhlmann Grain Company to me during the time I administered for the Government in Chicago and the Grain Futures Administration, complied, so far as I know, with those regulations of the Department of Agriculture.

Cross-examination:

The reports that were required under those rules did not disclose the name of the various customers, except when they exceeded 500,000 bushels in Chicago. I knew nothing specifically of the operations of Uhlmann Grain Company at Carrollton. In a general way I expect we are presumed to know how they carried on their business in Carrollton. We did not know personally of the transactions in Carrollton.

Redirect examination:

In these regulations at page 7, Section 8E, the Secretary of Agriculture has defined future deliveries. I will read the definition:

"A. (Reading:) 'Future delivery' does not include any sale of cash grain for deferred shipments or delivery."

That has been arbitrarily decided to mean any cash transaction for 20 days—beyond 20 days it is a future delivery, but the object in the Grain Futures Act was not to supervise or pay much attention to cash grain transactions 30 or 40 days or 60 days, and that was the idea when the Act was drawn, but someone decided afterwards 20 days was about the limit you could sell cash grain for and not call it a future delivery.

[fol. 110] The term "future delivery" has a general, common, and well understood meaning on these contract markets and in the grain business, and did in 1924. It is buying and selling grain for specified months delivery, maybe 6 or 7 months or maybe 2 or 3 months away. The principal months traded in are May, July, September, and December.

This language from a report of the Secretary of Agriculture, plaintiff's Exhibit 31:

PLAINTIFF'S EXHIBIT 31

"Transactions in grain futures in the sense in which these are referred to by the Grain Futures Act include primarily such contracts for the purchase or sale of grain for future delivery as are made in the open market on the floor of the exchange during the hours of regular trading, all of which are subject to the rules of the exchange."

coincides with my part of what futures are.

With this part of the report:

"Q. On the Chicago Board of Trade, for instance, all such contracts are 'subject to the rules of the Board of Trade of the City of Chicago and the regulations and requirements of its Board of Directors.' This circumstance has an important bearing on the matter of records, because under the rules of the exchanges the parties to every such contract must be members of the clearing association (or clearing house)."

coincides with my understanding of the rules.

This statement in the report is true:

"Q. Nonclearing members of the exchange may enter into such contract, but they are 'obliged to furnish forthwith the name of a clearing member who will accept and be liable for such contract.'"

They transacted business in Chicago at that time as shown by this language of the report:

"Q. Persons who are not members of the exchange must, of course, transmit their orders to some member for execution, and resulting transactions on the floor of the exchange must stand in the name of a clearing member."

That is true of all contract markets.

This language from the report is correct:

"Q. Speaking strictly, therefore, clearing members are the parties to these transactions on the exchange and they look for settlements to one another."

[fol. 111] That is the way they settled with each other daily.

This statement from the report is also correct:

"Q. Each clearing member then looks when necessary to his own customers, who are the persons for whom the transactions are made."

That is the way they transacted business there with their customers.

The daily reports that are made to the administration officer, the Grain Futures Administration, on contract markets in the year 1924 were reports of transaction by and between members had upon these exchanges. It did not include any report except when a special request or demand was made by the department of this fact, if it was a fact, on members at large.

(Here plaintiff's counsel offered in evidence that part of the report of the Grain Futures Administration to the Secretary of Agriculture for the year 1924, which was read and referred to by the witness. Defendants objected to the offer on the ground that it did not tend to prove any issue in the case. Objection overruled, defendants excepting at the time.)

---

Plaintiff offers in evidence the deposition of E. S. McDonough. Said witness deposed as follows:

I reside in New York City. I am New York manager for the Uhlmann Grain Company of Chicago. I have been such manager for three years. Before I came to New York I was in the employ of Uhlman Grain Company at Carrollton, Missouri. I was there about 13 months. Uhlmann Grain Company maintained an office at Carrollton. It was in the basement of the Flowers Hotel. I opened that office for the Uhlmann Grain Company. I was directed to do so by the Vice President, Paul Uhlmann, of Kansas City. He directed me to go to Carrollton to furnish up an office and open an office in the name of the Uhlman Grain Company as a branch of the Uhlmann Grain Company. In a general way Uhlmann Grain Company was engaged at the time in the transaction of grain futures on the various exchanges; Kansas City, Chicago, Minneapolis, Duluth, Winnipeg Grain Exchange and for the execution of orders given by the respective exchanges and also the solicitation of cash grain consignments, wheat, corn and oats, on the various markets. My connection at Carrollton was my first with the Uhlmann Grain Company. I was at Bloomington, [fol. 112] Illinois when I aligned myself with them in a business way. I came with them in this way; I had known the

President of the concern for many years, known of him, not intimately, when he was with the Rosenbaum Grain Company. I met Paul Uhlmann about 30 days before going to Carrollton for the first time. He did not go with me to Carrollton, I went alone. I made the arrangement with the proprietor of the Flowers Hotel for the office. I rented it from him. I installed a rolltop desk, chairs for the office, a blackboard, a desk for the telegraph instruments and typewriter. The office was then fitted with a telegraph instrument. The purpose of the telegraph instrument was that that was a private wire which we controlled, which we had leased from Carrollton to Kansas City from the A. T. & T. That means American Telephone and Telegraph Company. The Uhlmann Grain Company arranged the lease with them. I did not do it. I had the blackboard installed in the office. The purpose of the blackboard was to post quotations on grain, continuous quotations, which were transmitted to us over the private telegraph wire, from the various markets. These quotations came from Kansas City to us over this private wire, which represented actual transactions and bids and asked quotations on the various commodities which we posted from the various exchanges of the country. We posted the prices of wheat, corn, oats and rye. We posted quotations representing transactions on the Chicago Board of Trade, Kansas City Board of Trade, and posted wheat quotations representing transactions on the Winnipeg Grain Exchange. During the time I was there I had full charge and control of the Carrollton office. I was representing the Uhlmann Grain Company. I solicited business. I solicited customers to deal in grain futures or options.

Grain options represent a future transaction, that is a privilege to buy or sell a commodity with a time limit—the option represents the time limit for acceptance of delivery of the commodity traded in. That is a grain option. The definition of a grain future is embraced in that same definition. We term them grain futures. Options, would be, I think, the correct definition for it. I succeeded in getting a number of customers for the Uhlmann Grain Company at Carrollton; approximately 50. I was there about 13 months. I went outside the office to solicit. I solicited option business from Dickinson of Tina, and his two sons,

and Tom Cramer. I mean Charles T. Dickinson and W. L. Dickinson and V. M. Dickinson. I also solicited A. P. Dickson and Joe Dickson, merchants in Tina. I talked [fol. 113] business with them at various places, driving in their automobile, at their store, in my office, at the hotel, at my home where I was living, on the street. They approached me first. One of the boys, Joe Dickson, approached me first. I think he approached me when we were riding in his automobile. I also solicited Tom Mobley and James C. Allemont. I also solicited that very prominent farmer in Tina, Ernest Miller. There were many others whose names I cannot recall. I met Allemont on the train going to Tina when first came to Carrollton before we had really opened the office. We were engaged in conversation, engaged in conversation on generalities, and I introduced myself to him, he introduced himself to me. I had heard of him before as having been quite a speculator in grain. Before going there I had been given — list of men who had speculated with other houses. I was given a list by a man in Bloomington who used to run an office in Carrollton. He was in the employ of Claiborne. The Claiborne Commission Company had an office there several years prior to that. This man gave me a list—knowing that I was going to Carrollton—he gave me a list of names to call upon, and most of these were included in that list.

The only advice that I gave was recommendations that I received from my firm relative to spread transactions. By spread transactions I mean, buy a purchase of one commodity in one market, as a hedge buy a sale of another commodity in another market, or vice versa; or it might be the same commodity. I gave them that advice because I believed in it, because my firm believed in it. I gave advices on many different spreads. We dealt on spreads between Winnipeg and Chicago. I advised our client to take that spread. In doing so I was simply acting as a mouthpiece for the President of our concern. He had many years experience as an exporter and merchandiser in grain and I considered his judgment very good in giving advice as to spread. As a consequence, he advocated at various times the purchase of Winnipeg wheat against the sale of Chicago wheat, at different times, and vice versa. We made many different spreads, and many were successful. I

mean by that they worked; they showed profit; the same as you would show a profit on a real estate transaction, if you went out and bought. Our customers acted on the advice that I gave, in many instances. I had telephone conversations with them, imparting advice to them as to what they ought to do. I advised them both as to purchases and sales at the same time. These men did not buy very large quantities of wheat at any one time—I would not consider at any time there was any one of them that had any great large lines of grain. I think that some of [fol. 114] them contracted for as much as 50,000 bushels. When they did that we required a margin. The purpose of the margin was to protect trade. That is to say, between the fluctuations in the prices of the commodities in which they traded. We had no stipulated amount of margin. That was decided by the company which I represented; it depended on the client. It depended as to how they rated him as to his financial responsibility. I made investigation of the financial responsibility of some of these men in a casual sort of way. I did it just in conversation with various pepole in a position to know. I do not remember anyone in particular.

When I received an order from any of our customers to buy or sell, I immediately transmitted it to Kansas City over our private wire. It went to the Uhlmann Grain Company at Kansas City. If the order was executed, I received back from the Uhlmann Grain Company a confirmation. It came to me from over this same private wire from Uhlmann Grain Company at Kansas City. I remember of receiving checks or payments of money to be used as margins. I received checks from Allemont, Mobley, the Dickinsons, the Dicksons, and many that I can't recall. Those checks were deposited to the credit of the Uhlmann Grain Company either in the First National Bank or the Carroll Exchange Bank. Uhlmann Grain Company kept an account at each of those banks. I did not draw checks on those accounts. The officers of the Uhlmann Grain Company did that from Kansas City, as far as I know. I worked on a salary for the Uhlmann Grain Company. They gave me checks in payment of my salary. Some times they were drawn on The First National Bank of Kansas City, and another bank that I have forgotten, they carried two accounts there. I was never paid out of this fund that I

deposited at Carrollton. I receiver letters from Uhlmann Grain Company at Kansas City at Carrollton. When I closed the office at Carrollton I did not return these letters to the Uhlmann Grain Company at Kansas City. I do not know whether they could be found by a search. If so, I do not know where. I have no recollection of what disposition was made of them.

It was determined whether or not these customers had money coming to them or owed us money by the difference in the price of the market and the price of the commodity in which they were interested; the price at which it was bought and sold and prevailing price at the time the reckoning was made. That is to say, if they bought the grain on a certain date at a certain price and then sold later, and the price on the date on which they sold had advanced, they made a profit, and if it had gone down, if the trade was [fol. 115] closed, it showed loss. Uhlmann Grain Company reserved the right to close the transaction at any time they wanted to without notice; that is, I think they did. I think that many times they acted on that authority; and I think they did so with reference to some of the customers at Carrollton. I do not say all of them. The majority of our customers at Carrollton were farmers. I have no recollection of any of them having taken delivery of the grain which they bought.

"Q. The understanding was that it was not to be delivered, was it not?

A. No, sir, that was not the understanding."

I have no way of knowing whether these men were speculating on the rise and fall of the market. Some of them took their profits down while I was there. They were paid to them by checks from Kansas City, mailed to them direct. Sometimes I saw the checks. When any of them got behind on account of the depression of prices, we called on them for additional margins. They put them up. I think the business was closed in Carrollton about November, 1924; I will not be positive. It was closed by order of the Uhlmann Grain Company. At the time it was closed a lot of the customers had fallen away behind in their transactions. I do not just recall how their losses were made. Never at any time when I was there in charge of that office did I exercise the authority myself to close out any of the transactions. I

did not keep any books of the transactions. I do not remember C. I. Jacobs. I remember J. W. Hollister. I think he was in the real estate business, and insurance. Earl Cheesman, as I recall, was in the printing business. J. N. Calvert was in the coal business. Dr. Boss Brown was a practising physician at Bosworth, Missouri. Mrs. W. L. Dickinson was one of our customers. She was a farm wife. Mrs. Ed. McClain was a customer. I think she was the wife of a laundryman in Carrollton. I haven't any recollection of Mrs. T. S. Mobley. I think you have mentioned all of the ladies who were customers. There was a Miss Riggs also. She was secretary to Tom Mobley at Tina. Robert Stout was in the carriage business. Walter Scott of Carrollton, I think was a retired farmer. I think he handled business for his father. Before his father died I handled lots of business for his father and Walter gave many of the orders. I remember Joe Timmons. At that time I should judge him to be a man 23 or 24 years old. I think he was an undertaker. I think B. Joseph was an employee of the Sinclair Oil people.

[fol. 116] Cross-examination:

We had a blackboard there in the office. Quotations were put on the blackboard. They came from Kansas City over our private wire and they represented the actual transactions and bid and asked quotations on commodities traded in on the various exchanges. These orders which came from these gentlemen in Carrollton while I was there, were for the purchase and sale of grain, mostly on the Chicago Board of Trade, Winnipeg Grain Exchange, Kansas City Board of Trade, and I think as I recall there were a few transactions on the Minneapolis Chamber of Commerce. None of these orders that were given were executed at Carrollton. They were all executed either on the Kansas City Board of Trade, the Chicago Board of Trade, the Minneapolis Board of Trade, or the Winnipeg Grain Exchange. These blackboard records recorded actual transactions and the prices at which transactions were closed on the various exchanges whose dealings they purported to record. Wherever the blackboard did not reflect an actual transaction, it recorded a bid and offer.

All orders that I received I transmitted to Kansas City over our private wire. Some of the orders transmitted by

me to Kansas City were rejected. When any orders were rejected, they were always rejected in Kansas City. None of them by me. I was required to transmit all orders to Kansas City for acceptance or rejection, at all times. No order that was ever given to me at Carrollton was ever attempted to be carried out until after I had transmitted the order to Kansas City for acceptance or rejection. And whether or not the order was going to be accepted and executed or rejected would depend on the action of the Uhlmann Grain Company at Kansas City. And until a confirmatory wire or letter came from Kansas City I would not know, and the man who gave the order would not know whether his order was going to be carried out, or had been carried out.

The Uhlmann Grain Company kept two bank accounts in Carrollton. The checks that were received from these Carrollton people, with whom the Uhlmann Grain Company dealt, which were delivered to me are deposited in banks in Carrollton for the account of the Uhlmann Grain Company. I had no authority to draw against either of the funds in either one of these banks. Neither did I ever attempt to do so. I deposited these checks in the Carrollton banks under instructions from the Uhlmann Grain Company. The only [fol. 117] thing that I ever did or attempted to do, and the only thing I had any authority to do, with relation to these moneys or marginal checks, was to deposit the moneys in these two banks under instructions that I received from the Uhlmann Grain Company. When a deposit of a check was made by these people dealing with the Uhlmann Grain Company, in the manner that I have described, I would immediately notify the Uhlmann Grain Company in Kansas City, giving the name and the amount. I would first wire them over the private wire that I had received such and such an amount from such and such an account; I would then make the deposit in the bank, receiving a duplicate deposit slip for same; I would immediately mail the duplicate to Kansas City, stating in a letter that this stipulated amount of such and such a man would be placed to the credit of so and so; and upon receipt of same they sent the respective customers receipts, by mail.

The records of our customers at Carrollton, their names, addresses, and of the state of their accounts, were kept in Kansas City. I kept no books at Carrollton save the records

of the transactions between Uhlmann Grain Company and these persons who gave their orders through me, were kept at Kansas City. They were not kept in Carrollton. No transactions, no orders, were closed in Carrollton, they were all given to Kansas City, and executed on some market, as indicated by the order. Nothing was ever executed in the Carrollton office. I had no authority at any time from Uhlmann Grain Company to myself, either to accept or reject an order given by the proposed customer of the grain company at Carrollton. And every order that I got I first transmitted to Kansas City for rejection or acceptance, and fulfillment or declination of fulfillment. I never closed anything out myself on account of insufficient margins. I had no authority to do anything like that. If a customer did not respond to a margin call which was given to me by the Kansas City office, I immediately notified the Kansas City office. What the Kansas City office did, who decided that, I do not know. I do know I never did any closing out myself. I called for additional margins when I was notified by the Kansas City office; I was notified by the Kansas City office the amounts to call as margins. I absolutely did no deciding of my own as to when margins would be called for. I kept no ledger records of the accounts. When the customer gave an order it would be transmitted by me by telegraph to Kansas City. If the order was accepted at Kansas City it would be relayed from Kansas City to whatever [fol. 118] market the order was to be executed on. I would have nothing to do with that myself. After the order was executed, we received a telegraphic confirmation of the execution, confirming the order, and confirming the execution of it. Then I notified the customer, if possible, by person or by telephone. A mail confirmation followed immediately, which would be mailed direct from the Kansas City office to the customer. It would show the purchase or sale of the commodity, and also show the name of the party with whom the transaction was made on the respective exchange. That is, if a customer gave an order to buy, the confirmation would show the exchange on which the order to buy was executed, and the seller.

"Q. These orders that were received by you and transmitted by you, in all of these transactions at Carrollton, were executed on one of these exchanges?

A. They were.

Q. In every instance?

A. Yes, sir.

Q. And they were always executed by the Uhlmann Grain Company with some member of the Exchange or Board of Trade?

A. They were.

Q. And were they always executed with a member of the Board of Trade or, if it happened to be Winnipeg, the exchange, who was a member of the Clearing House Association?

A. It would."

I know as a matter of fact that every order that we got in Carrollton covered by all these suits was executed by the Uhlmann Grain Company on what had at the time been designated by the Secretary of Agriculture as "contract markets."

Every one of these transactions or orders that we received at Carrollton during the time that I was there, that was executed or carried out, was an actual transaction, wherein the customer at Carrollton and the person with whom the Uhlmann Grain Company dealt in behalf of the customer, represented an actual agreement to sell or an actual agreement to buy the grain covered by the subject matter of the contract. In each transaction the customer had the right to demand delivery of the actual grain, if he so desired. If his order was to sell, he could be called upon by the person to whom he agreed to sell for delivery. That is what I meant in explaining these contracts to Mr. Jones, these options, these transactions in futures.

[fol. 119] "Q. Did you have any knowledge at any time when these orders were taken by you and transmitted, as to whether or not the customer intended when he gave an order to buy, to demand delivery of the article that he ordered?

A. I did not.

Q. Did he have the right to demand it if he so desired?

A. He did.

Q. And if he wanted to offset it by a sale at the time of delivery, he had a right to do that also?

A. He had.

Q. The same is true of the inverse transaction; if the order was given to sell for future delivery?

A. Yes sir.

Q. He could be called upon to deliver or he could offset it by a purchase if he so desired?

A. He could."

If a man buys 5,000 Chicago May wheat at a given time, and at the same time gives an order to sell 5,000 Winnipeg May wheat, I would call that a spread between two different markets, the same commodity, and one would be hedged against the other. The tendency of hedging is to eliminate, as much as possible, the element of speculation; in other words, reduce your risk. That is the inevitable effect of a spread transaction; it reduces your risk.

In executing the orders of these Carrollton customers which were transmitted to Kansas City, the Uhlmann Grain Company executed the orders in the name of the party who gave the order to me. I mean when the order was actually executed, for instance, an order to buy a commodity on the Chicago Board of Trade, the Uhlmann Grain Company would execute the order in its own name, and would stand behind it. In each instance the actual orders were given and accepted between two clearing members on the exchange, by virtue of the Grain Futures Act and by virtue of the various rules of these exchanges. The Uhlmann Grain Company was behind each one of these transactions, individually behind each one of these transactions that it executed for its customers on these various exchanges. If the customer did not pay, the Uhlmann Grain Company would have to.

"Q. Did the Uhlmann Grain Company in any of these transactions that were executed for their customers, including these gentlemen who transmitted their orders to Kansas City through you, make any profit or sustain any loss by virtue of any fluctuation or change in the market between the time the order was given and the time it was executed?

[fol. 120] Mr. Jones: That is objected to, because it calls for the witness' conclusion.

A. The only compensation they received out of any order was a commission.

Q. The Uhlmann Grain Company made no profit out of a loss made by any of these customers?

A. No sir.

Q. And it sustained no loss out of any profit made by these customers?

A. No, sir."

Uhlmann Grain Company sent monthly statements of their accounts to these customers at Carrollton. They were sent from Kansas City direct to the Customer. When these customers closed a transaction and had money coming from the Uhlmann Grain Company, the money was paid to the customer. The money was sent from Kansas City direct to the customer. I never gave any checks at all to any customer. The confirmations that were sent through the mail should have given the names of the persons with whom the Uhlmann Grain Company dealt for the customer. So far as I know they did in each instance.

These confirmations on these particular transactions were mailed from Kansas City and they confirmed direct from the Kansas City office. They would not have an opportunity to get the name of a party to the trade if it was transacted in Winnipeg and Chicago because those names were never transmitted over the wire, but Chicago and Winnipeg would have the record of the names of the party on the other end. The customer who gave us this order to be transmitted to Kansas City could get the name of the other party to the transaction immediately, if he desired. He could get it immediately upon request. He had that right.

Uhlmann Grain Company was also engaged in the elevator business; it also dealt in cash grain. It was a member of the Board of Trade at Kansas City during the time when I was working for it at Carrollton. It was also a member of the Chicago Board of Trade. It was also a member of the Board of Trade of Minneapolis; it had an authorized representative who was a member of the Grain Exchange in Winnipeg during all this time.

"Q. And every one of these transactions wherein orders were executed by the Uhlmann Grain Company, of these customers whose orders you transmitted to Kansas City, [fol. 121] were executed on one of these exchanges, either

Winnipeg, Chicago, Minneapolis or sometimes in Kansas City?

A. They were."

All of the transactions with these defendant customers were kept in ledger accounts by Uhlmann Grain Company. Every individual purchase and sale was kept in the records in Kansas City; and if they were executed in Chicago or other places they were also kept there. Whenever Kansas City was advised of the execution of an order, if it was executed on some other Board of Trade, a written confirmation of the order and of the fact of its execution would be put in the mail from Kansas City and transmitted to the customer at Carrollton.

Redirect examination:

I cannot state whether the letter of confirmation would disclose the name of the purchaser if it was a purchase, or the name of the seller if it was a sale. Referring to the blackboard again, we posted the fluctuations of the market all during the day, during the market hours. As nearly as physically possible, they were kept right up to the minute. Practically all of the money that was received by me or paid to me at Carrollton I deposited in these banks at Carrollton. It was not always paid at my office, sometimes it was paid in the town or at their homes. I had to go after it sometimes; went to their homes and got it and brought it and deposited it at Carrollton. Most of them, I think, lived in Carroll County.

At the time of these transactions Uhlmann Grain Company maintained its office in the old Board of Trade Building. At some time in there they moved their offices into the new quarters of the new Board of Trade.

A bid and offer is sort of an indemnity on open transactions. A spread is a sort of hedge, rather than a protection, that is, a hedge against the fluctuation of the market.

The orders I received were transmitted to Kansas City. I did not pass judgment on them, but transmitted them to the Uhlmann Grain Company at Kansas City. It was there decided whether it would be accepted or rejected. If they were rejected I would receive notice imm-diately over the same private wire. If it was rejected, I notified the customer. I cannot recall the name of anyone whose order

was rejected. I recall that some were rejected. We have that in every day occurrence.

[fol. 122] The Winnipeg market was not designated by the Secretary of Agriculture as a contract market. He had no jurisdiction over the Winnipeg Grain Exchange. Several of these customers purchased as much as 50,000 bushels of wheat. I can name some who could have paid for that much. One is Ernest Miller, for instance. I think Mr. C. T. Dickinson could have done it. I don't think V. M. Dickinson could have done it. I cannot say whether either of the Mobleys could. J. C. Allemont could have done it. I knew his financial condition then, I do not now.

As to what any of those men would have done with 50,000 bushels of wheat in a business way, I am not in a position to answer; I do not know. I have no way of knowing what they would do with it. They were all of them farmers, a lot of them interested in grain elevators. The Dickinsons, Cramer, Allemont and Miller were interested in grain elevators besides Mobley. They were all members and stockholders of the Farmers Elevator at Tina. I cannot tell you what the capacity of the elevator was. I would think it was over 10,000 bushels. They would handle a great deal more than that in the course of a year.

(It is admitted by counsel for both sides that at the time these suits were filed the plaintiff was a corporation organized under the laws of Illinois, and had its principal office and place of business in Chicago, Cook County, Illinois; also that each one of these defendants at the time these suits were filed, was and now is a citizen and resident and inhabitant of the Western Division of the Western District of Missouri; that Uhlmann Grain Company's principal office and place of business was in Chicago, Cook County, Illinois, at the time the suit was filed, has been ever since, and now is.)

---

Benjamin L. Hargis testified for the plaintiff as follows:

I am Manager of a Chicago stock and bond and grain house—Lamson Brothers, in Kansas City. I have been in the grain business approximately 25 years, all of the time in Kansas City, Missouri. In the year 1921 I was President of the Board of Trade in Kansas City. I have been

active in the grain business during the past 25 years. I am familiar with the usages and customs of the trade, having particular reference to dealings in futures on the contract market on grain exchanges. In the year 1921, I and Mr. Griffin, President of the Chicago Board of Trade, were invited by a committee of Congress to appear before that [fol. 123] body which was considering the passage of the present Grain Futures Act. We appeared before that body on numerous occasions and gave testimony before that committee which had under consideration the passage of what is commonly known as the Capper-Tincher Bill. In our appearances before that committee the general subject of grain futures trading and its relation to past grain and national and international prices was gone into. I have before me a report gotten out by the Government of the United States, or by somebody, of the testimony which Mr. Griffin and I gave before the Committee on Agriculture in the House of Representatives. In looking at this transcript it recalls to my memory that we discussed and presented to these committee members the relation or effect of the prices and quotations on these grain exchanges on actual shipments in interstate commerce, and also the economic necessity of these tradings—future tradings. I remember of having discussed those subjects. In my opinion, these transactions in grain futures on grain exchanges such as Chicago, Kansas City, and the large places, have a direct bearing on interstate movements or shipments of grain in interstate commerce.

(Objected to by defendants' counsel on the ground that it does not tend to prove any issue in this case; that what prompted the passage of the Act by Congress is not material. Objection overruled by the Court, defendants at the time excepting.)

It appeared at this hearing, and it apparently was clearly understood, that trading in grain futures, say on the Chicago Board of Trade, have a very direct bearing on the prices which wheat, whether in Kansas or Missouri or in Texas, may bring; in other words, Chicago is what might be termed the Greenwich of price registration. At some point people must come to a place where you can register a basic value, and through the use of Chicago as such, not alone the American, but the world price level is established there, on

supply and demand which is sometimes not on the immediate wheat on hand but on the prospective crop. Therefore, it is a forecaster of values and it is a stabilizer. In other words, if we were to run into a very short crop of wheat in Kansas and an exhaustion of those supplies and there was nothing but the actual wheat, its prevailing price would be high, much too high and you would have an exhaustion of supplies, and after that reached a certain level, with spreading, with hedging and with speculating, the high price would then begin to bring down consumption. On the other hand, [fol. 124] if you have a superabundance of wheat and no stabilizer and simply the movement of cash grain from the farms to terminals, there is no possible outlet except through a low price, because a man through a whole season will anticipate his ultimate requirements and not the immediate requirements and in that manner stabilize the price when it becomes an investment purchase in their mind.

"Q. What is the practice of hedging?

A. If you go to the producer, he may hedge if he likes. As a matter of fact a great deal of wheat is delivered at country elevators by the producer and these country elevators will take it in and hedge it or hold it without hedge or storage fee for the product. If a Kansas City house, an export house or a big elevator concern has an export order for a million bushels of wheat, they can't possibly accumulate that cash wheat over night but they can acquire it through the purchase of futures which will enable them to make the sale. It is not a perfect insurance but it is the nearest thing we have to accurate insurance in the cereal market. They know relatively how cash wheat is selling to the buyer. A high protein wheat will bring a high, large premium. That, of course, is reflected in the bidding. They go in the pit the next morning and buy a million bushels of futures against that sale. The market may be up against that purchase. The market may be up one half to three quarters of a cent but nevertheless they buy it and hedge just the same and that is the penalty that goes along with it because in the law of averages, purchases and sales, in an open market will work out to disadvantage and to advantage about the same over a period of time. Therefore the big operator, the big cash operator, keeps hedged right up to the handle. I know the banks require their borrowers to keep their wheat hedged."

Concerning this hedging practice, the southwestern farmer does not hedge. The northwestern farmer hedges a great deal. In this part of the country, the country grain dealer is learning more and more to hedge. He is assuming less risk and he is doing it quite extensively although some of them continue to speculate on cash grain and leave it wide open. The flour miller hedges. The exporter absolutely hedges. As a matter of fact, export sales are ordinarily not made at flat prices. They are made at so much over or under a future delivery. The Chicago delivery price, I will say in July wheat, today would be a basic price, plus so much for freight and other charges, Liverpool. The corporation which conducts an elevator for the storage of grain hedges [fol. 125] absolutely. And by that I mean the terminal elevator or even the interior elevator, in a great many cases where they handle grain in excess of their actual cash capital. They couldn't get along without hedging.

When any of these people hedge—the producer, the grain dealer, the country elevator, the exporter, or the flour miller, they make a trade in the open market. They either buy or sell futures. There is no other way that this can be done. The purpose of a hedge, as I understand it, is to eliminate as far as humanly possible the speculative risk incident to the ownership of the grain. That is absolutely the fact. And the man who hedges must hedge by purchasing against a sale or selling against ownership in these great exchanges such as the Chicago Board of Trade by buying and selling in futures.

This dealing in futures has this effect on the price of grain for the producer: The amount extracted for the handling of grain from the price paid the farmer to export is the lowest percentage of any other commodity in the United States. Take our merchants in cotton goods. They must have a leeway of ten to twenty per cent to carry them against risk because they have to anticipate their requirements. It is the same with furniture. But through the hedge system, which has to carry a speculative feature to afford the balance, the records indicate how small it is. It is very small.

The amount taken by the middleman for handling grain is one per cent or less. I know that one concern here turned over twenty-eight million dollars in grain last year with a net to themselves of less than one-half of one per

cent—cash grain. It is generally recognized that this has been made possible by reason of the fact that the grain man who handles these commodities between the end of the harvest season and takes up the slack, is able to hedge his purchases by the time he goes into the grain futures market and do it. The economic result of this small handling cost is that the intermediate cost is extremely low, and affects the price the farmer gets, and the price the ultimate consumer must pay. That is to say, careful hedging brings about the element of added profit to carry speculative risk, and it gives the producer more and costs the consumer less.

The prices of trading in futures on the Winnipeg market affect the commodities that are dealt in in the same relative way as the prices of Chicago, Kansas City and American markets do. Sometimes the markets get out of relationship and then you get into spreading.

[fol. 126] I am familiar with the method commonly followed and used by members of the grain exchanges—especially Kansas City and Chicago—in dealing with each other in the purchase and sale of these futures. I am a member of both the Kansas City and Chicago Exchanges. Under this customs and practice a man is obliged, in case he makes a purchase of a grain future, to accept delivery of it. He enters into an engagement to accept delivery of it at a certain specified time, and if he sells it short, he is required under the rules, to make delivery within the specified delivery period, although there is nothing to keep that man, if for some reason he desires to sell out his grain, which has been purchased for July delivery—to sell it in July—there is no reason why he cannot do it and close the one side against the other and vice versa. If it weren't so you couldn't hedge.

The system of offsetting is this: If you buy ten wheat today for July delivery contract grade from Chicago and assume that I am either a hedger or speculator, as the case may be, and ten days hence the market may be either lower or higher; if I sell a like amount of contract grade it closes the original transaction. There is a grain clearing house which handles the interchange of trades in Kansas City, Chicago, Minneapolis, and so forth. Just as the

bank clearing house does in Kansas City. The same is true, I think in Winnipeg; but, nevertheless, they offset whether the transactions are cleared or not through the clearing house. These offsetting transactions between these clearing members operate the same way as banks operate by the cancellation of the transaction.

"Q. So that a man who makes a purchase from another man or one member of the exchange who makes a purchase from another by subsequent purchases and sales he may ultimately be dealing with somebody else rather than the original one?

A. It has lost its identity after the first day's clearing.

Q. Is that practice permitted and recognized by these various grain exchanges?

A. It has been established by them as the only way to eliminate risk. In other words, this central clearing house closes up all trades that it made, one firm against another and instead of you being responsible to me for a contract we have the grain clearing company responsible to each of us for that contract after the first day's clearing.

Q. And each one of you is responsible to the grain company?

A. Yes.

Q. The obligations and responsibilities are mutual?

[fol. 127] A. But I may buy wheat from you today and accept delivery in July from the clearing company and it may come from an entirely different source."

I cannot give the percentage of these futures transactions which result in the actual delivery of the grain. To illustrate: Suppose I buy 10,000 bushels of wheat in the country tonight, and I hedge it tomorrow morning by a sale of 10,000 July wheat, and later in the day I sell that ten cash wheat to another dealer here and he sells me the July wheat I had sold. There is a transaction of thirty thousand against that one ten thousand in one day. That ten thousand wheat can conceivably go around the pit in hedging ten, twenty or any number of times in a day. You must have a volume of trade largely in excess of any cash demand to give you a liquid market.

"Q. What effect has a liquid market and what advantage, if any, is there in a liquid market brought about by the

great disproportion in the volume of trade between future sales and actual cash sales?

A. We will assume American exporters sell—in the aggregate throughout the country sell five or six million bushels of wheat over night during their rush season, when the business is best. They haven't that supply on hand or if they have it on hand they have it under hedge, they go into the market the first thing in the morning to buy in that wheat against foreign sale. Unless you have a foreign market it would be impossible to buy five or six million bushels without shooting the price up and as soon as that is done it would immediately fall."

The relative portion in volume of dealing in futures, not resulting in an actual delivery of the commodity, and actual deals in cash grain is very great. This has a very desirable effect on the ability of the farmer immediately to hedge his wheat growing in the ground. This great volume has a tendency to stab-lize prices. Naturally, the bigger the object to move, the more difficult to move.

Cross-examination:

A spread is a purchase or delivery in some market and the sale or delivery in some other market. That is not speculation between the two markets. It is an attempt to equalize balance just as we attempt to equalize rates balances when one freight rate is made in a certain territory there have to be certain other changes. Spreads are wider and narrower. That is an abnormal condition a man attempts to correct by trades.

[fol. 128] Redirect examination:

"Q. What effect, if any, has this dealing in futures on the elimination of speculation so far as the owner of property is concerned if he desires to eliminate it in shifting the speculative risk off——

A. (Interrupting.) The public generally carries the hedges of the United States. That is the general conception of it. Unless there was a speculative rule there wouldn't be anybody to take the peak movement of crops except at a sufficiently low price to guarantee against loss just as they do in the Argentine where they haven't any duty.

Q. When you say speculation you mean dealing in futures by the public generally as commonly conducted on the Boards of Trade by the public?

A. That is commonly called speculation."

I differentiate between speculation and gambling. The difference is this: If you were to come to me today and wager five hundred dollars that it would rain before night or that a certain wheat field would make fifteen thousand bushels to the acre, I would call that gambling, but if you made a transaction in grain futures and put up your money, you would become one of the equalizing factors of the trade and you would help to support the market or depress it, as the case might be, but you find a balance through speculation. Julius Barnes, when he was at the head of the Grain Futures Administration, and through the Department of Agriculture, assembled figures which showed that it took about two hundred million bushels in open futures to carry the actual hedged floating grain in the United States, and by that I mean grain off the farms, and the actual volume of trade must be much larger than two hundred million bushels to keep that liquid. Speculation is regarded as an inseparable attribute of the ownership of property. If a man owns property its value goes up or down. Grain futures trading is supposed to be an insurance, and it is so considered because it is necessary. I cannot better state it than to say that I can go to the Bank of Commerce and borrow dollar for dollar practically against warehouse receipts for grain in store if I sign an agreement to keep it under hedge all of the time; but if I would attempt to borrow without hedge, they would probably lend me seventy-five cents on the dollar.

I agree with the following statement made by Mr. Griffin made before the Congressional Committee:

"Sometimes the word 'speculator' is used in a sinister sense—as the equivalent of 'gambler'. This is incorrect. [fol. 129] The distinction between gambling and speculation is recognized by all economists and equally by all thoughtful persons: The risks of a speculator are those which are inevitably incident to the ownership of property. The gains and losses of a speculator are those which are incident to actual changes of value. On the other hand the

risks of a gambler are incident to nothing—such risks are purely self-created. The gains and losses of a gambler do not depend on changes of value—the gains of one gambler depend upon nothing except the losses of another."

Q. Do you agree with that?

A. That is true.

Q. (Continuing quotation by Mr. Griffin): "Hence the gambler performs no economic function, and since gambling contains recognized elements of evil, it is forbidden. But the purchaser and holder of grain performs a valuable economic function, for without this intermediate ownership each ultimate consumer would be obliged to purchase, at harvest time, his entire annual supply of grain."

Recross-examination:

From my viewpoint there is no such thing as gambling in grain. I think a man who enters the grain market and subscribes to the rule laid down wherein he states he will deliver or accept delivery, is practicing subterfuge if he goes in there to gamble. One of the things the Grain Futures Act was intended to remedy was grain manipulation, such as the purchase of a larger amount of grain than was available which would result in a corner, or by continuous selling to depress grain prices below their actual level. I think we must all admit there have been times when, for a short period, a speculator of huge wealth could temporarily either depress prices or boost prices, but eventually you come to your law of supply and demand which prevails, and he can live but a short time. He must take the high-priced grain and attempt to bury the crops, and if he is short he must buy from somebody.

There is no such thing as a bucket shop under the United States laws, and I do not know of any in existence.

"Q. You know what a bucket shop is?

A. Where a man takes both ends of a trade—no transaction made.

Q. It is pure fiction, isn't it?

A. It is absolutely illegal and one of the most undesirable practices we ever had in the country.

Q. And so undesirable is it that the rules of these Boards of Trade prohibit its members from operating them?

[fol. 130] A. Not only that but they go out of the way to hunt them out and have cooperated with the United States District Attorney in Kansas City and elsewhere to eliminate them.

Q. But they are an evil to the operators?

A. They are absolutely without the pale of the law.

Q. They are places where trades are made in fiction and no actual sale is made and there is no intention of delivering?

A. That is the bucket shop.

Q. And where such sales are made, then you don't hesitate to say those transactions would be illegal and void?

A. I should say they are illegal and void.

Q. Not only under the laws of the state but under the rules and regulations of your Board of Trade?

A. That is absolutely correct.

Q. And where a dealer is conducting a place of that kind and inviting people to trade in them and where just a margin is put up with no intention that there shall be any actual trade, sale or delivery, that is a violation of the law?

A. A bucket shop is a violation, yes, and any man who is a member of any exchange is subject to expulsion if caught.

Q. A member of an exchange could do that and——

A. (Interrupting. I haven't known——

Q. (Interrupting.) I say that notwithstanding that you have those rules a member of these Boards of Trade could set up a bucket shop and operate it, couldn't he?

A. Oh, it is possible for anybody to do it.

Q. And when he did it he simply violated his obligations to the board?

A. And lost his membership, yes.

Q. Now, would you say that a man or a company or a concern was conducting a legitimate business under that Act of Congress that was running a place where he invited his customers to put up margins and deal in grain purchases or sales when there was no intention to deliver but just settle the whole transaction on the fluctuation of the market?

A. Without any execution in the market?

Q. Yes?

A. That is a bucket shop.

Mr. Jones: That is all.

Redirect examination:

By Mr. Stinson:

Q. Now explain just a little bit more in detail, if you will, some of the things that a man who conducts the bucket shop does. You said something about his taking the other side of the transaction himself. You meant what by that?

A. If you were in the bucket shop business I would come in or you might invite me to sell five thousand wheat and there would be some quotations on the bulletin board and [fol. 131] you would give me a memorandum of the transaction at a certain price. You are both principal and agent. You just bet he is wrong if you are operating a bucket shop.

Q. In other words, if I am the bucket shop man I take the other end of that transaction myself?

A. Quite right.

Q. Now, suppose, I take an order from a customer of mine in Carrollton, Missouri, and I am a member of the Board of Trade of Kansas City, Missouri, Chicago, Illinois, Minneapolis, Minnesota, and Winnipeg, Manitoba, and I take an order from a customer to purchase ten thousand bushels of Chicago May wheat and suppose—I am assuming that you are the customer—suppose you put up a margin with me in Carrollton against that purchase and suppose that my local office in Carrollton telegraphs the order to the Kansas City office and that Kansas City, in turn, relays that order to Chicago and that I, a member of the Board of Trade of Chicago, execute that contract by going into the pit and buying the quantity of wheat ordered by you in Carrollton and I obligate myself under the rules of the exchange to pay for that wheat under the usual practices and I make the trade in my own name for you and I make the actual trade and there is a record made of it and I confirm the trade to you by relaying the information from Chicago to Kansas City, and from Kansas City to Carrollton: Am I conducting a bucket shop or not?

A. Oh, no. You are in the legitimate commission business acting as agent.

Mr. Stinson: That is all.

Recross-examination:

By Mr. Jones:

Q. Mr. Hargis, suppose that I have an office in Carrollton and if you have placed an order with me to buy 5000 bushels of wheat and you put up a margin, and then later I do the same thing again and the market goes against you and I represent that it has been sold and that you are down and out, that you have lost and that you owe me several hundred dollars and that I am sorry the market went against you, that I was disappointed in the turn of the market, that it didn't turn out as I expected and place another order, and it is my opinion and judgment that you will come out better the next time. What would you think of that? What would I be doing?

A. You wouldn't be bucketshopping. You would be unwise to say the least.

Q. I would be trying to get you to speculate?

A. I don't know. It might be that I would come to you for advice.

[fol. 132] Q. I am just hypothecating the case the way I understand it is. Would that be legitimate trading?

A. I doubt if it is wise to press a man too far to make a deal but I don't see that it affects the validity of this contract.

Q. With no delivery intended and none made?

A. No, I don't say that. If he made the contract on the Chicago Board of Trade, the principal becomes subject to all the rules and regulations of the exchange his agent is a member of.

Q. And after I suffer losses and you know I don't intend to accept a delivery and my loss is such that I got behind with you and I continue to advise you to make those trades, what kind of a transaction would you call that?

A. I would say it was unwise soliciting, absolutely.

Q. And it would be bordering on absolute speculation, there is no delivery contemplated?

A. Well, I don't think—I can't conceive of a house, a member of the Chicago Board of Trade or the Kansas City Board of Trade or any other Board of Trade permitting any customer to make a contract if he admitted he had no intention of observing the rules to receive delivery and make delivery.

Q. Now suppose he does do it, then what?
A. The solicitor does do it?
Q. Yes?
A. I would say he is culpable.

The Court: What?

A. I would say he is culpable if he was to take a trade if the client had stated to him there was to be no delivery.

Mr. Jones: That is all.

Mr. Stinson: That is all.

(Witness Excused.)"

---

RICHARD UHLMANN, called as a witness for plaintiff, testified further as follows:

Direct examination:

Referring to the statement of defendants' counsel that the delivery month in some of these transactions with the defendants were changed, I believe some of the defendants were short Winnipeg October wheat, and as we approached that period, rather than have them default, or we ourselves default, which is something the Uhlmann Grain Company [fol. 133] has never done, we simply transfer their short holdings in October to some further distant option. That transfer was accomplished in this way: Where time wasn't an item, we would try to do it as conservatively and as best the market permitted by limiting our order given the broker—the broker in Winnipeg—to buy any October, and sell any November at a guaranteed limit. That was done wherever practical.

"Q. What then, as a matter of fact, if you were short on October wheat and you extended the option or whatever you might call it in November, what, as a matter of fact, happened with respect to these transactions? It seems they were short on October wheat and they get a contract to deliver wheat in October in Winnipeg——
A. Yes.
Q. Was that transaction closed and a new one made?
A. Yes, sir.

Q. An actual transaction commenced with some Winnipeg grain exchange?

A. Yes.

Q. And a new contract made for November delivery instead of October?

A. Yes.

Q. At this particular time they were low on their margins?

A. Yes sir.

Q. Did the Uhlmann Grain Company sometimes buy them for them without exacting any additional margin?

A. Yes."

Cross-examination:

In making this transfer we would instruct our broker to buy the October and sell the November.

"Q. Who gave these instructions?

A. I think in a good many instances they came from our customer in Carrollton upon our advice.

Q. Why did you give them that advice?

A. Simply because at that season of the year—rain had extended over a longer period than usual; and we thought it would be easier to make delivery in November than October."

I would not be surprised that there was more than a million bushels of grain transacted in Carrollton; but it was distributed over a great number of accounts. This is not a large amount for a town like Carrollton. I have been manager of an office in Lafayette, Indiana, where I traded ten million bushels for one man—Jackson Brothers.

No wheat was delivered under any of these Carrollton contracts. The record shows this. I knew that.

[fol. 134] "Q. Well then, from that, and from the habit of dealing with these people, you knew no delivery was intended?

A. No; I didn't know it because other deliveries were future, and when speaking of futures they are speaking of an uncertainty."

When you are speaking of futures, I mean that no one has a knowledge of what will happen tomorrow, or any-

thing else; I mean there are no guaranties. And so when men are dealing with grain in the future, they are speculating on what the future is going to bring about in regard to prices. I did not know that this is what these men were doing; our *ph*ychology will only tell us what we imagine is in the other person's mind. We have no insight. If the thing had been a cinch, all of Carrollton, instead of these fifty men, would have been trading with us. I mean by that that in futures there is a certain element of uncertainty, and if there had been a guaranty that everything would be 100 per cent the way they thought it would, there would have been no speculation about it. But there being no cinch, I guess that the matter was speculation on the rise and fall of the market. That is just a casual thought of mine. Paul Uhlmann had charge of the plaintiff's affairs in Kansas City. He had authority to speak for the Uhlmann Grain Company and give advice. When these trades went against these men, the Uhlmann Grain Company at the time took the attitude that there would be a change for the better. Mr. Hargis said the markets were so out of relation with each other that the chances were that Winnipeg and Chicago would come closer together at that time. If it had, the advantage to them would have been that their trades would have shown a profit as compared to the older status.

"Q. You would settle that in the difference of markets?
A. Yes.
Q. And in that event no delivery would be intended by either party?
A. You can't state it definitely; there might be."

I mean by difference in the market, for example: You might be a real estate holder, or you might have an option on a piece of real estate where you actually contemplated delivery, but if someone comes along later and says, "I'll give you $5,000 for it"—you actually contemplated delivery, but by resale you would cancel out that obligation.
I do not know whether all of these men lost or not.
As to the amount of money our customers in Carrollton lost in the operations carried on by us for them, I would say [fol. 135] there were probably $65,000 or $70,000 owing to us after the payments which we had met, and after the

margins or money had been exhausted, or offset. This includes about 46 people, among whom only five are these defendants. I mean by that that after taking into account all of the money that these various parties paid us, after the margins had been eaten up and lost in the transaction, they still owed us approximately between $65,000 and $70,000, after deducting also payments made against profits which they had taken down.

Redirect examination.

I never knew any of these Carrollton people to refuse to take down their profits when they made them, neither did the Uhlmann Grain Company ever fail or refuse to pay to these men the profits which they made when they made them. The funds were immediately disbursed to them.

"Q. In these transactions on which various boards of trade, whenever there was a purchase—an order given to purchase on any of these grain exchanges, was there a corresponding sale of the same goods,—the same commodities?

A. Yes, sir.

Q. Now, when these transactions were closed and assuming now that an order had previously been given to purchase 10,000 bushels of Winnipeg wheat and then an order was given to close that transaction, upon what market was that transaction carried out?

A. Upon the same market where the initial trade was engaged."

---

O. W. Rowe, recalled for further recross-examination, testified as follows:

Recross-examination:

I have here the records showing the number of bushels that each of these defendants dealt in while we were in business at Carrollton. A. P. Dickson began in February. The total amount bought and sold by him during his entire operations on all of these Boards was 555,000.

The total amount dealt in by Mr. Calvert is 685,000; Joe Dickson, 585,000; Ernest Miller, 535,000; Charles T. Dick-

son—I mean C. R. Dickson, 70,000 bushels; S. P. Dickson, 605,000 bushels.

From these figures I cannot give you an idea of the number of bushels remaining forty or odd dealt in.

[fol. 136] Defendant's Exhibit "C" appears to be a letter of the Uhlmann Grain Company which I presume was written by Paul Uhlmann.

Exhibit "A" appears to be a letter dictated by Paul Uhlmann.

Redirect examination:

The 555,000 bushels of wheat dealt in by A. P. Dickson represents a purchase against a hedge of the entire account.

"Q. Under the rules of the exchange could he transfer—offset his purchases against his sales and make deliveries that way without going and buying 250,000 bushels of wheat and then going and selling it?

A. Yes.

Q. Under the rules and regulations and under the representations he would get from the Uhlman Grain Company?

A. Yes.

* * * * * * *

Q. No sir. Could he offset the purchases he had contracted to make against the sales he had contracted to make?

A. He could if they were in the same market and if they were in different markets he could not."

Recross-examination:

If a man bought on one market and contracted to sell in another, the measure of his liability would be on the completion of his contract after the contracts were closed out; that would ultimately turn out to be the difference at which he had bought and sold. And if one market fluctuates either up or down, it would either decrease or increase his liability.

Plaintiff rests.

### Defendant's Motion for Declaration of Law

At the close of the plaintiff's case, an oral motion was made in behalf of each and every defendant for a declaration of law to the effect that the plaintiff is not entitled to recover against such defendants. The request was denied, each defendant at the time excepting.

---

### Defendants' Evidence

Thereupon, to sustain the issues on their part, the defendants, by their counsel, offered the following evidence:

Defendants offer in evidence the deposition of Paul Uhlmann.

[fol. 137] (Counsel for plaintiff states into the record that Mr. Paul Uhlmann, who lives in Kansas City, was sick at the time and unable to attend the trial.)

Paul Uhlmann, testifying for defendants, deposed and said as follows:

I live in Kansas City, Missouri. I am Vice President of Uhlmann Grain Company. Its main office is Chicago, Illinois. It has an office in Kansas City, Missouri, in the Board of Trade Building. I am in charge of that office. I have been here five years. Uhlmann Grain Company is engaged in the grain business. We are in the elevator business, having a large elevator here in Kansas City. Its capacity is about two million bushels. We execute orders for customers. I mean by that, orders in futures. They are executed on the exchange in the different markets. In 1924 I was in charge of the Uhlmann Grain Company office at Kansas City. The affairs of that office and its business were managed under my direction and supervision. I am acquainted with its system of bookkeeping. A man by the name of Rowe was in charge of it. He is with us now. In 1924 we had a branch office at Carrollton, Missouri. It was operated under the name of the Uhlmann Grain Company. E. S. McDonough was in charge of that office. He now has charge of our New York office in the Produce Exchange Building.

I did not call at Carrollton during the time we had an office there; yes I did, once or twice. I was in the office. At the time, Mr. McDonough was in charge, for the Uhlmann Grain Company and representing the Uhlmann Grain Company. He received his orders or instructions from our customers. I gave him instructions about how to manage the business. They were simply that he was to take orders from our customers, and to wire them to us as soon as he gets them. He did that. We received them. When we received them we wired them to the respective markets, what they were given for. McDonough wired orders to us and we wired them to Chicago, Winnipeg or Minneapolis, or whatever they were given for. These orders came by wire over our private wire. We had a private wire to Carrollton, Missouri. Those orders were transmitted to us over that private wire to our office in Kansas City. I think McDonough is a telegraph operator, but he had an operator in addition. I do not remember who he was. When these orders were received the clerks checked them on our books. We have those books here in our office now.

[fol. 138] Referring to the account of I. N. Calvert, I presume that February 26th is the date that the account commenced. The books would show. The account was closed November 8, 1924.

The words "P. & S." on the first item, February 26, 1924, means there is an accounting; it's a statement showing the transaction. If the transaction showed a profit, there is a credit item to the man, and if it showed a loss, there is a debit item. The letters "P. & S." in connection with that first item, to which is added the figure, $63.00, means that there was a $63.32 loss. The account does not show all the net amount. It's on both sides. It's simply, the net amount is booked on the ledger, not the details. We can get them for you; they are in our possession. I will produce them at the time of the trial.

I would be willing if you (counsel for defendants) will call at our office to allow you to look at our books.

The books would show the kind of grain Mr. Calvert dealt in. I think he dealt mostly in wheat. He gave his orders at Carrollton for the grain he bought. The same is true as to all the others who dealt at Carrollton. I do not know what kind of orders were given. I presume some of them

were given over the phone; or given verbally to him in the office. It is not customary to have a written order. It is not always customary to write them out. None of them were written out and sent to us.

I correspond with McDonough while he was in Carrollton and received letters from him. I am not sure whether we have any of those branch office letters. There would not be many because it's all done over the wire. We might have copies of the telegrams. We have copies of the orders.

When these customers at Carrollton gave their orders we require either that they put up some money in advance, or that they pay us in case the transaction showed a loss. It depends to a great extent on who he was. If they were men who lived there all their life and traded before, that we knew, we might not have asked them to pay us immediately; but the usual rule is to require some margin. The purpose in requiring that margin is to secure us against loss.

"Q. How would you sustain any loss?

A. Because we only acted as their agents, and in case there is a loss in the transaction, we naturally paid it."

We were responsible to the Board of Trade. For example: If we should sell wheat for a customer at 90 cents, [fol. 139] and the market would go up and we would buy it back at 92 cents, on 10,000 bushels he would lose $200.00, so our loss would be $200.00 if he would not pay us. The margin protects us against the fluctuations of the market. When we settle with our customers, we ascertain the amount they were to pay or were to receive in this way. If they made a profit, we paid them what we owed them. The profit was ascertained after the transaction was closed out. We settled all differences between what the market was when they bought and what it was when they sold. That would determine our liability to them and their liability to us. If the fluctuations in the market showed an increase between the time they bought and the date they sold, that difference would represent their profit and what we owed them. These trades—of course, it was not just the difference in the prices—the trades—we actually have to pay the money to the Board of Trade.

"Q. Who did you pay that for?

A. We pay it for them to the clearing house."

If, for example, Mr. Calvert gave us an order on the 7th of June to buy 10,000 bushels of wheat, we give an order to a broker to buy 10,000 bushels of wheat on the Board of Trade, and he confirms that order to us by telegram. The telegram won't show who the wheat was bought from, but the confirmation does. I can look that up. When that notice comes to us we give Mr. Calvert a confirmation.

"Q. Does that disclose to him who you bought it from?

A. I am not sure about it, but a man can always find it out if he asks us, and in most cases it does show who we bought it from.

Q. Who you bought it from?

A. Yes."

DEFENDANTS' EXHIBIT 1

Defendants' Exhibit 1 shows that we bought 50,000 bushels of May wheat in Chicago. That is a sample of the statements that we sent our customers for whom we purchased. Every time we made a purchase for any of the defendants in these cases, we sent them a similar statement. It was mailed at Kansas City; all of these statements were sent from Kansas City. On the other hand, if we sold we sent them a statement also.

DEFENDANTS' EXHIBIT 2

Defendants' Exhibit 2 shows that we sold 10,000 bushels of December wheat on August 29. That is a sample of the statements that we sent in cases of sale from our Kansas [fol. 140] City Office. And every time a sale was made we sent one of them out.

Defendants' Exhibit 1, which is a form of a notice of a purchase, does not show who it was bought from. That is true of all the statements that we sent out in these cases.

Exhibit 2, which shows a sale, does not show who it was sold to. This is true of all notices of sale. The reason for that is that in order to shorten the telegrams between Chicago and Kansas City, we did not give the names, but they are on file in our office.

"Q. But the names of the persons from whom you bought, or the persons to whom you sold, were not disclosed to those customers?

A. Only if they asked for it."

I do not recall any of them ever asking for it.

These telegrams were sent over a private telegraph wire leased from the Western Union. We have a contract with them. I do not have a copy with me, but I can get it.

We ceased operations in Carrollton, I think, the latter part of 1924. When we did, we gave up this private telegraph wire. We took the equipment out of the office. It consisted of a few desks and chairs and a telegraph instrument. We posted the markets on a board, a blackboard.

"Q. And what was the purpose of that blackboard?

A. To show everybody who came in and wanted to know what the market is; what it actually was."

During the day, as the market rose and fell, it was posted on this board. The commodities listed on this board were wheat, corn and oats, also rye.

Referring to the statement of account attached to our petition against Mr. Calvert, the figures over which the stenographer has written the letter "A" are numbers, just from our books. This account attached to the petition in the Calvert case does not tell the number of bushels of wheat or other kinds of grain he bought from that particular date, nor the number of bushels sold on any particular date.

Some of these orders were executed on the Kansas City Board of Trade. We are a member of the Kansas City Board of Trade. When those orders came we executed them on the floor of the Exchange here; and if they were in Chicago we wired them to Chicago. We have member-[fol. 141] ship there. We have also at Minneapolis and also at Winnipeg. We wired them to the offices at these respective towns wherever they were to be executed. They were received at Kansas City and then relayed, under our direction, or the direction of our office. A spread is grain which you buy in one market and sell in other markets against it as a hedge. For instance, one might sell 10,000 bushels of wheat at Winnipeg, and hedge it by a purchase of Chicago wheat against it, because there should be always the same difference between two markets, you see, but when the difference is either wider or narrower, one can take advantage of trading that way. For example, you give an order to buy me 10,000 bushels of Chicago wheat; I would hedge in Winnipeg against that, by selling 10,000 bushels

in Winnipeg. If you bought in the Chicago market, and that market went up three cents, and the Winnipeg market at the same time went down only two cents, you made one cent a bushel. If it went the other way you lose.

"Q. How would you settle that spread with me; I having given you the order?

A. I buy it in Chicago first and sell it in Winnipeg and then when you want to close I do it, except I sell in Chicago and buy in Winnipeg."

* * * * * * *

Q. How would you determine how much to pay me?

A. Exactly what we get from the Exchange, less the commission.

Q. We would settle it by the difference in the market?

A. Yes.

Q. If it went one way I would win and the other way I would lose?

A. Yes.

Q. When I lose, who profits?

A. Well, this is a hard thing to say, because it all goes through the clearing house."

Before we closed our business in Carrollton we ascertained the financial condition of these men only in a haphazard way. I asked the manager, McDonough. And I asked the First National Bank at Carrollton. I wrote no letters of inquiry about any of them but I talked to the cashier of the First National Bank quite often.

I could not tell from this statement the amount of wheat or corn that Mr. Calvert bought or sold at any time. Our books show what the largest amount dealt in at any time would be. On this statement the words "Ck. Mgn." mean [fol. 142] that he put up a margin. That was to protect us against the fluctuations. We did not deliver Mr. Calvert any wheat or grain; neither did we deliver any to any of these Carrollton customers.

The contracts made between us and these parties were recorded through the Chicago office. They were not recorded in Kansas City office. They are in the possession of Uhlmann Grain Company in Chicago, and recorded in their office there. They were not recorded in Kansas City

because it is a matter of convenience to keep them in Chicago.

"Q. Well these books you have here, don't they show the same thing?

A. They show everything except with whom the transaction was made. They show the quantity and the price."

When we received these orders we turned some of them down. And when they were turned down the orders were not relayed to Chicago. I turned some of them down when I thought the people traded too heavily. I would arrive at that conclusion from the general idea I had of their financial standing. I mean they would be trading too heavily when they went beyond their means. I did not turn down many, I turned down some. I do not have a record of those I turned down. I made no record of that. I do not remember whom I turned down, but I remember that some of them were turned down.

When these orders were received from McDonough, it would be about one minute until they would be transmitted to Chicago. When I turned them down I would not notify the Chicago office. I had full control of our office here and power to manage it and to approve or reject the orders. Mr. McDonough was authorized and directed by me to solicit customers, and he did that.

Puts and calls are trade privileges. A privilege is a hard thing to explain. I don't think they ever traded in puts and calls down there; they didn't trade in them. There were no trades made in puts and calls; they were on the Board of Trade. They didn't trade in them through us.

We reserved the right to close any account at any time we wanted to; and we exercised that right. In these particular cases, these men wanted me to carry their trades until they owed us a certain amount and then they asked me to close them out and I did that. It came about that they were indebted to us when the accounts were closed because they lost money on their trades. In those cases [fol. 143] where we have sued on notes, we have a book account of the items that make up the amount of the notes. In a good many cases the notes are for larger amounts than the people owed us. These notes were given to us just like money. They gave us a note for about—say one man gave us a note for $4,000, just as an example. Before the transaction was closed out he said, "Now, instead of

putting up the money, I give you my note, and when the note—the amount—is about as much as I owe you on the note, I want you to close it out." When we brought the suits we credited the notes so as to bring them down to the exact amount. The amount sued for on the notes is the amount actually due at the time the suit was filed.

Referring to the suit against C. T. Dickinson, his note is for $1,547.00.

As to the note signed by W. L. Dickinson and C. T. Dickinson, so far as I remember, the Dickinsons gave us individual notes, and one of the older Dickinsons endorsed them, but we had separate individual accounts with each. On the note that was given by W. L. Dickinson, I presume was to close the account.

Cross-examination:

Whenever an order was given to the local man at Carrollton that order was telegraphed to Kansas City; and it was telegraphed to Kansas City so the order could be executed. So there wasn't any completed contract until the order was executed in Kansas City. Every one of these orders whether it was for the purchase of grain or for the sale of grain was executed on some Board of Trade. It was executed by the Uhlmann Grain Company with another broker on the Board of Trade, either in Kansas City or Chicago or Winnipeg; except in Winnipeg we used a house with a different name than the Uhlmann Grain Company. But they were our agents. When a house in Winnipeg executed an order for us, they executed it with or entered into a contract with a broker on the Board of Trade. Whenever an order was given by telegraph, it was always confirmed in writing by us at Kansas City, and confirmation mailed back to Carrollton to the man who bought or sold; always on the same day. And these confirmations were always sent through the United States mail.

All of these accounts, whether represented by note given by these men, or whether representing a balance due, was for the amount of our loss, what we had to pay out for them as their agents.

[fol. 144] "Q. Did you in any of these transactions make any profits yourself out of any losses made by any of these men?

A. No.

Q. So that the sole interest—financial interest of the Uhlmann Grain Company in these transactions was the commission?

A. That's right.

Q. And whether these men won or whether they lost or whether they made a profit or whether they made a loss, you never sustained any loss or any profit provided these men paid what they owed?

A. That's right.

Q. Whenever they made any profit in any transaction, did the Uhlmann Grain Company or did it not pay these men?

A. Always paid them if they had a credit.

Q. How often would you pay them?

A. Whenever they asked for it."

The Uhlmann Grain Company is a member of the Kansas City Board of Trade. That Board has been designated as a contract market, and had at the time, by the Secretary of Agriculture. Uhlmann Grain Company is also a member of the Chicago Board of Trade and was a member at all the times these transactions took place. The Chicago Board of Trade had been designated as a contract market by the Secretary of Agriculture. Whenever we got an order either to purchase or sell from a customer at Carrollton, from any and all of these defendants, say on the Chicago Board of Trade, we told a broker to buy it or sell this amount of wheat for us. When I say broker I mean somebody connected with the Board of Trade. I could have executed the order myself. I could go onto the Board of Trade floor during trading hours and actually execute the order by buying that many bushels of wheat. I bought from whoever wanted to sell. I always purchased from a member of the Board of Trade. Under the rules of the Board of Trade, nobody but members had the right to buy or sell on the Board; and the transactions were always executed by a member of the Board of Trade on these contract markets. The orders were always given in our name because the Board of Trade only recognized the Uhlmann Grain Company. We stood behind every purchase that was made. We were obligated, under the rules of the Board of Trade where the trade happened to be made. We kept a margin up ourselves to cover all our purchases and sales with the

clearing house or the Board of Trade. And whenever we made a purchase in our own name for a customer in the [fol. 145] course of the day, we would be charged with that, and if we made a sale for a customer there would be the same charge against the Uhlmann Grain Company.

The quotations that were put on the blackboard at Carrollton were received from the Board of Trade at Chicago and Kansas City. It actually reflected the prevailing market prices of grain at that time as shown by the quotations on the Board of Trade itself.

"Q. Now, the moneys that you are seeking to recover from these various defendants, outside of your commissions, do all of these amounts or any of these amounts or any part of these amounts represent any profit to the Uhlmann Grain Company?

A. No.

* * * * * * *

Q. And you are out the money by reason of the fact that you, when these transactions were closed and, for instance, they sold for less than the price that they bought, you made these contracts in your own name and stood behind them and actually paid out the money that represented the loss?

A. That's right."

These spreads are where a man gives an order to buy in one market a certain amount of grain, and to sell in another market the same amount. These are hedging transactions. In such transactions the element of risk is practically eliminated, so that when a man bought a certain number of bushels of Chicago May wheat and sold an equal amount of Winnipeg May wheat, if there wasn't any fluctuation in the difference between the two markets, why you wouldn't have any loss or any gain. And whatever fluctuations there might be would represent a comparatively minimum loss. Business men, farmers, grain elevator men, millers, large wheat buyers and sellers, commonly hedge their transactions in order to eliminate the speculation or loss or gain feature of their transactions. The Uhlmann Grain Company, which has a large grain elevator, does this very largely. It is all hedging, in fact, the entire thing.

When one of these customers would buy 10,000 bushels or give- *an* amount of grain in one market, and at the same

time sell a given amount in another, he himself would have the right to say as to when he would sell the one and buy the other. He wouldn't have to close both transactions at the same time. That was at his opinion, so long as he kept his margins up so we were protected from loss. As a mat-
[fol. 146] ter of fact, these notes were given by these people in lieu of what is ordinarily a margin; not all of them, but the larger ones.

We reserve the right to close out these transactions in order to protect ourselves from loss. And unless the margin got down to so narrow a point that we could not, without danger of losing money ourselves, continue to maintain a transaction open, we always waited until the man gave us an order to buy or sell before the transaction resulted in a purchase or sale.

While we never delivered any of the grain to these men, they could have delivery if they called for it. If they elected to sell rather than call for actual delivery that was their own affair.

"Q. Now, in executing these orders, as I understand it, the Uhlmann Grain Company always made an actual transaction?

A. That's right.

Q. With another member of the Board of Trade?

A. Yes.

Q. Who, in turn was usually representing a customer?

A. Yes.

Q. But the transactions were dealt formally between you and the other member of the Board of Trade?

A. Yes.

Q. And each one of these firms stood behind that transaction?

A. Yes.

Q. You had a fund up with the clearing house, with the Board of Trade at Kansas City and in Chicago where the transactions were completed, and each one of your brokers in a purchase and sale transaction was behind that transaction itself?

A. Yes.

Q. And each of you was representing a principal, you representing these men in Carrollton and they their clients?

A. Yes. We have right now with the Board of Trade in

Chicago $420,000 guarantee fund, about what we owe them tonight in cash, if something should happen tonight.

Q. And you are required by the rules of the clearing house association in Chicago and Kansas City to keep a certain margin in cash or collateral up with the clearing house above what you owe them each night?

A. Just now it's over $400,000, the excess margin.

Q. In each one of these transactions that you executed in these cases here, was there an actual trade made between your customer through you and the other broker's customer through him?

A. There was.

* * * * * * *

[fol. 147] Q. And if either you or the other broker who carried out the orders of your principals wanted the actual name of the customer for whom he acted, did you, as a matter of fact, have a record of it so it could be shown and did the other broker have a record of it?

A. Yes.

Q. And that's required by the rules of the Board of Trade?

A. Yes.

Q. And you did that in each instance when you carried out these orders for these men here?

A. Yes."

Redirect examination:

The blackboard at Carrollton noted the quotations from Kansas City, Chicago, Minneapolis and Winnipeg; they were gotten over the wire from our office in Kansas City. They would not come direct from Chicago, they would be relayed in Kansas City. Winnipeg quotations were wired to Chicago, relayed there to Kansas City and then relayed to Carrollton. The Kansas City office was the central office. An order on the Kansas City Board of Trade was executed by one of our men going into the pit and buying or selling grain. There is always a trade and that is registered here in Kansas City.

These men were not speculating on the rise and fall of the market, they were simply trading on the difference between two markets.

"Q. You knew there was no delivery intended?
A. No, not necessarily, in fact some men—this particular case—but there is a great deal of grain actually delivered.
Q. But you know in this case there was no delivery?
A. They might have asked for delivery.
Q. But it was not asked?
A. No, it was not asked."

If these men could not have repaid us we would have advanced the full amount of the purchase or sale price. We wouldn't have taken any more chance than we could. The whole matter was in our hands. When we asked the banker and learned that some of these men were not very strong financially, we cut them down then. I could not remember who we cut out. When we cut them out we did not notify them, write them a letter.

I don't think I wrote many letters to those men in Carrollton. I might have written some, but I don't remember any and I know I did not write many. I wrote only on request.

I know what offers are in the grain trade. We execute those orders for other people. Offers are the same as puts [fol. 148] and calls; it's a technical expression. We did not deal in any puts and calls at Carrollton. I doubt if we dealt in any offers at Carrollton. (Counsel hands paper to witness.) That means, I presume there was in Winnipeg on the Board of Trade. That means that if they got $27.27, see, for selling 30 offers, which means that if the market would have reached a certain point on that day, we there would have been short 30,000 bushels of wheat; they would have to sell 30,000 bushels of wheat at a given price. That to an extent is a speculation. I read in a book a few months ago about offers, that it's the same principle like a life insurance company would insure a man. I would consider this was a business transaction in the way of an insurance company. Then the only actual transactions we had with the people at Carrollton was that they put up money as margins or as offers, and we got the money and then we closed out the transactions; where they had money coming to them we gave it to them. And the amount was ascertained by the fluctuations of the market and settled that way. Every transaction we had with any of these men was ascertained and determined in that exact way; and only

that way. As to the money we paid out for these men, they knew we were laying it out for them.

"Q. You yourself know of no request, verbal or in writing, by which a single one of these men asked you to pay out this money?

A. Because it isn't customary to get it in writing, but they knew it's a customary thing to pay that. They knew we had to pay that.

Q. How do you know they knew it?

A. Because they have traded all their life.

Q. How do you know that?

A. I have talked to these men; I have met them on the Board of Trade. Some of them come there yet."

The money we paid out for them, we paid to the clearing house. It was taken out of this margin that we keep up there all the time. That's the way it was paid. The commissions that I spoke about are—we get a fourth of a cent a bushel for executing the trade, which is $25.00 for each $10,000; about that. That is figured in the account we sued on. These notes were given in lieu of margins.

These men went to Chicago themselves to see Mr. Fred Uhlmann, the Dickinsons and an old gentleman, he and two other men went to Chicago themselves to see Fred Uhlmann, who is the President of the firm, and asked him to accept these notes in lieu of margins, because they didn't [fol. 149] want to draw the money out of the bank at that time, and they went up to Chicago themselves so they wouldn't have to take my word for it, because it's very unusual to do that. I knew that they wanted to give these notes; they gave them voluntarily. I wasn't present, but these men came back via Kansas City and told me exactly what they did. I did not ask them to give me a check. They said it would be a great convenience if we would take their notes and I looked them up and their references made me believe they were very well-to-do men. I do not know how many of these men sued are solvent.

"The Court: Mr. Jones, about how long will it take you?

Mr. Jones: That is kind of hard to tell. The direct examination of our witnesses will be short and as to the point as I can make it.

The Court: I am just wondering, in view of the general attitude, whether the testimony of one witness—one of the defendants—will cover each case. Your theory of the case is that the facts will run along about the same in each case. I wonder if we may agree that the other defendants called in their cases would testify to the same effect?

Mr. Jones: I think it could.

The Court: I just apprehend that the testimony will take such a course that that might be done.

Mr. Jones: I can say from our theory that it will take that exact course.

The Court: What do you say, Mr. Stinson?

Mr. Stinson: I don't want to object to something that the court suggests but I can see that these defendants, from what has gone before and what their counsel has said, are all going to rely on perhaps oral statements that have been made to them. They were not made to all of them all of the same character, and when one man testifies as to what he may think about it, I don't think it ought to reflect the situation of the others. My cross-examination will be as short and directly to the point as I can make it but I am not willing to agree that the testimony of one may be taken as the testimony of all.

The Court: I am not asking the parties to bind themselves. I am making the suggestion so that if it could be so agreed it will save time and shorten things up.

Mr. Jones: The points we rely on will be about the same with all of them. I will say this that it is true there were [fol. 150] some statements that will be testified to that were not made to all of them and in that case I would be glad to indicate."

Defendants offer in evidence Section 8 found on pages 13 and 14 of the rules and by-laws of the Board of Trade at Chicago relating to dealing in futures and bucket-shops.

(Here ensued a colloquy between counsel and the court, wherein it was agreed by counsel for both sides that the rules of these exchanges had been offered in evidence generally and that counsel for either side may direct attention to whatever portion or part thereof he desires.)

Section 8 of the Rules and By-Laws of the Chicago Board of Trade is as follows:

"Sec. 8. Any member of the Association who shall be interested or associated in business with, or who shall act as the representative of, or who shall knowingly execute any order or orders for the account of any organization, firm or individual engaged in the business of dealing in differences on the fluctuations in the market price of any commodity or corporate stock—without a bona fide purchase and sale of the article for an actual delivery; or who shall be a member of, or shall, in his own behalf, or as agent, directly or indirectly make, execute, or give any orders for a trade or transaction in or upon any bucketshop or any so-called exchange, wherein is conducted or permitted the business aforesaid, or who shall knowingly accept, either directly or indirectly, from any member of any so-called exchange, wherein is conducted or permitted the business aforesaid, any orders for trades or transactions to be executed in the Exchange Hall of this Association, shall be deemed guilty of unmercantile conduct, which renders him unworthy to be a member of the Association; and upon complaint to and conviction thereof by the Board of Directors, he shall be expelled from membership in the Association. Any member who shall, directly or indirectly, become or continue a member of, or in his own behalf or as agent make any trade upon, or otherwise contribute to the maintenance of, or accept any orders to be executed upon the Exchange of this Association from any member of a market or exchange in the city of Chicago permitting the distribution of its quotations covering the commodities dealt in upon the Exchange of this Association, without imposing and enforcing prohibitions upon the use of such quotations in bucketshops, such as are imposed by this Association upon its quotations, shall, upon complaint to, and conviction thereof by the Board of Directors, be expelled from membership in this Association.

[fol. 151] "All orders received by any member of this Association, firm or corporation doing business upon the Board of Trade of the City of Chicago, to buy or sell for future delivery any of the articles or commodities dealt

in upon the floor of the Exchange (except when in exchange for cash property) must be executed in the open market in the Exchange Hall during the hours of regular trading, and under no circumstances shall any member, firm or corporation assume to have executed any of such orders or any portion thereof by taking the trades, or any portion of any of them, for their own account, either directly or indirectly, in their own name or that of an employe, broker or other member of the Association. Any member convicted of violation of this rule by the Board of Directors shall be expelled.

"When any member, or any firm of which a member of this Association is a member, or any corporation of which a member is an officer, whether acting as principal or as agent, shall either directly or indirectly make or execute, or cause or permit to be forwarded for execution, upon any exchange or board of trade located outside of the City of Chicago, an order or a so-called 'put' or 'call,' or for any contract respecting the purchase or sale of grain or provisions for future delivery, when by the rules, regulations, customs or usages of such exchange or board of trade it is provided or permitted, or where the parties to such 'put,' 'call' or contract contemplate that such 'put,' 'call' or contract may be fulfilled or satisfied by the delivery of a warehouse receipt or receipts issued by a warehouse located in Chicago, such member, or such member of such firm, or such officer of such a corporation shall be deemed guilty of conduct which renders him unfit for membership in this Association, and upon conviction thereof he shall be expelled."

Defendants offer in evidence their Exhibit "D" being a list of customers at Carrollton. Plaintiff objects to the Exhibit for the reason that it does not tend to prove or disprove any issues in the case between plaintiff and these five defendants. Objection overruled, plaintiff excepting.

Said Exhibit "D" is in words and figures as follows:

[fol. 152] DEFENDANTS' EXHIBIT "D"

**Statement**

**D Ex D HW**

**Kansas City, Mo., —— —, ——.**

C. N. Office, Suspense to Uhlmann Grain Co., Grain Merchants, Dr.

| | | Due us |
|---|---|---|
| Missouri | | |
| Carrollton | Leo Archibald | $814.25 |
| Bosworth | Dr. Boss Brown | 2,439.64 |
| Clifton Hill | J. Marion Burton | 1,653.00 |
| Carrollton, | J. O. Busby | 158.18 |
| " | I. N. Calvert | 3,886.20 |
| " | Earl Cheesman | 1,186.98 |
| Boyard | T. H. Cramer | 1,730.02 |
| DeWitt | Crispin & Crispin | 1,801.48 |
| Carrollton | A. P. Dickson ) Dickson | 3,714.06 |
| " | Joe Dickson ) Bros. | 3,632.25 |
| " | C. R. Dickinson | 782.27 |
| " | S. P. Dickinson | 2,415.52 |
| " | Mrs. W. L. Dickinson | 810.36 |
| " | Mr. W. L. Dickinson | 1,547.43 |
| Tina | V. M. Dickinson | 1,088.16 |
| Chillicothe, Box 421 | L. C. Girdner | 76.96 |
| Tina | Jno. M. Griffin | 596.50 |
| Carrollton | E. M. Grimes | 743.09 |
| Bosworth | C. G. Grossman | 2,824.50 |
| DeWitt | Geo. Hollister | 684.52 |
| Carrollton | J. W. Hollister | 1,773.68 |
| " | Hugh Huddleston | 1,423.45 |
| Wakenda | Huddleston Bros. | 1,776.59 |
| Carrollton | C. I. Jacobs | 166.26 |
| " | B. Joseph | 1,056.24 |
| " | Mrs. E. F. McClain | 1,107.37 |
| " | E. F. McClain | 1,035.10 |
| " | J. S. McKinney | 1,010.19 |
| Tina | Ernest Miller | 3,106.43 |
| Carrollton | H. R. Mobley | 1,776.38 |
| " | R. E. Mobley | 1,795.26 |
| Tina | Mrs. T. S. Mobley | 251.37 |
| " | Mr. T. S. Mobley | 1,561.13 |
| Carrollton | S. E. Mobley | 1,901.78 |
| " | L. A. Ransdell, c/o CN Office | 1,043.87 |
| LaPlata | F. K. Reyner | 515.71 |
| Clifton Hill | J. E. Richeson | 665.24 |
| Tina | B. M. Riggs | 1,042.42 |
| Bosworth | W. N. Riggs | 332.63 |
| Chillicothe | Dr. M. M. Russell | 2,193.86 |
| Carrollton | Walter Scott | 51.65 |
| Bosworth | Roy Stanley | 1,333.25 |
| Carrollton | Robt. Stout, Stout Motor Co. | 1,325.60 |
| " | R. A. Thompson | 1,669.35 |
| " | Joe Timmons | 803.13 |
| " | F. T. Ward | 588.57 |
| | | $63,891.88 |

[fol. 153] Defendants offer their Exhibit "A," being a letter from the Uhlmann Grain Company addressed to R. A. Thompson at Carrollton.

Plaintiff objects to the offer for the reason that no letter addressed to anyone other than any of these defendants can have any bearing on the issues in this case.

Objection overruled, plaintiff excepting.

DEFENDANTS' EXHIBIT "A"

*Plaintiff's* Exhibit "A" is a letter on the letterhead of Uhlmann Grain Company, is dated Kansas City, Missouri, November 12, 1924, addressed to Mr. R. A. Thompson, Carrollton, Mo., signed Uhlmann Grain Company, by Paul Uhlmann, Vice-President, and is in words and figures as follows:

"We had a conversation this morning with Mr. McDonough and we believe that the proper thing to do is gradually reduce this Winnipeg November-Chicago December spread, and unless we hear from you to the contrary, we will reduce yours gradually, and do the very best we can for you.

We are certainly awfully sorry that we got off so badly on this spread, and it is really the first bad one we have had since we have been in business.

I still think that there is a good chance for improvement, and this spread only worked this way on account of manipulation in Winnipeg. But it is dangerous to wait until the last day, so for this reason, we recommend that you reduce it gradually.

Therefore, as stated above, we shall handle this for you the best we can, unless we hear from you to the contrary, and Mr. McDonough will keep you fully posted."

Defendants offer in evidence defendants' Exhibit "C," being a letter to I. N. Calvert from Uhlmann Grain Company. Said Exhibit is in words and figures as follows:

DEFENDANTS' EXHIBIT "C"

"Mr. I. N. Calvert, Carrollton, Missouri.

DEAR SIR: Hereto attached please find statement of your account which explains itself. We are, of course, awfully

sorry that this Winnipeg spread turned out so badly but assure you that we have given you at all times the very best advice we had. Would appreciate it if you would mail us a check upon receipt of this letter for this amount or if you cannot pay it all at once, write us how you can [fol. 154] pay us and you will find us very reasonable about it.

In other words, we want to continue to do business with you and we feel sure that we can help you make it back. If you want to make arrangements with us to pay a certain amount each month we shall be glad to handle the account in this manner for you provided you make a part payment upon receipt of this letter.

Respectfully yours, Uhlmann Grain Company, by Paul Uhlmann."

Said letter is dated November 13, 1924.

---

T. H. CRAMER testified for the defendant as follows:

My name is Thomas H. Cramer. I live north of Carrollton, Missouri. I was acquainted with E. S. McDonough who represented the Uhlmann Grain Company at Carrollton. I knew where the place of business was. It was in the basement of the Flowers Hotel. I called at that place while it was in operation there. I had some dealings with Mr. McDonough; I made some spreads. I mean by that we either bought or sold—usually Winnipeg against Chicago. If we bought Winnipeg we sold Chicago to the same amount. The maximum amount that I dealt in at any one time was 40,000 bushels bought; what they call a 40,000 bushel spread. During the time that McDonough was operating that business there, I made a lot of deals. They were not all spreads. I sold some corn. It was futures. About the time I made these deals I harvested some wheat, say during likely the month of July. I did not sell this wheat that I raised the way that I spoke of. I did not have any intention of doing that, or delivering the wheat I raised on any of these deals. In the year 1924, I might have had 700 or 800 bushels that I raised. I sold it to the Farmers Elevator Company. Uhlmann Grain

Company was not connected in any way with the sale of that wheat.

With reference to this wheat that I bought or sold, I did not intend to deliver the wheat in case of sale, that is, the actual wheat, and in case of purchase I did not intend to accept delivery. I had no place to put it, or money to pay for it. I was not financially able to pay for that wheat or accept it, and in case where I sold wheat I was not financially able to buy the wheat and take delivery of it. It was not intended to make delivery in case of sale [fol. 155] or to accept delivery in case of purchase; no delivery was intended.

I had conversation with McDonough in which he gave me advice about these deals. I met him there in the Spring, I think there at Tina, likely. He was explaining the proposition. I had never dealt on the Board and didn't know anything about it. He explained how they done these things. He was talking about a spread at that time. I don't remember what spread it was, probably Winnipeg or Chicago spread, I think, and I had heard of people, you understand, tapping the market and I wanted to get the details. He explained that you could buy on one market and sell on another and make some money. I would find out whether I made money or not by the rise and fall of the market. If the market went in our favor, you made money, and if it went the other way, you would lose money. After he made that explanation to me, well I says, "Mac, I don't want to get into anything I will be reliable for; I don't want to get in anything that will get me caught with a big chunk of wheat." He said, "I will take care of that, you don't need to worry. I will see that you get out of that before time for delivery and will make you some easy money." That was before I made any operation. I had some losses during the time I was trading. When I had these losses I had some conversation with McDonough about them. He asked for the margin. He said, "Oh, we have these losses. Keep on, and we will come out of it. It is a lead pipe cinch. We can't lose, we will make a bucketful of money. It will get right some of these days." When he asked for those margins, I put up as long as I could. I have made no preparation to receive or accept delivery of any of this grain I was dealing in. I made no preparation to deliver when I was on the selling side. Had no

intention of it. At the time I sold wheat, when I was on the selling side, I did not have any wheat except this 700 or 800 bushels. I presume you would say that McDonough called on me. I met him and he talked over—he explained the proposition. This occurred at various times and places. On one occasion I met McDonough in Tina. It wasn't at the place of business there in Carrollton. I presume McDonough was at Tina on that occasion to solicit business. He did talk about this business. He was there to explain the proposition to us fellows. I mean by that five or six, eight or ten, maybe, in there, in the office of the Farmers Warehouse Supply Company. I owned one-eighth interest in the Tina elevator. The elevator is rented and I have nothing to say about its operation. I had nothing to do with buying and shipping grain from that elevator. I [fol. 156] simply had an interest with other parties. The name of the corporation is Farmers Warehouse & Supply Company. I own stock in it. The fact is the owners of the elevator rented it to the Farmers Warehouse and Supply Company and they operated it.

I told McDonough I would not be able to take the wheat and pay for it. He said, "Sure, you don't want to carry this up to then." He said, "We will make some easy money and get out before time to deliver." I said, "Be sure we get out before the time to deliver."

"Q. Was there anything said to you as to the actual wheat that was bought or sold?

A. I told him I didn't want it. Sure."

I am not one of the defendants in these cases. But I have been sued in the State court. I am a stockholder in the Farmers Warehouse & Supply Company which operates the elevator at Tina. I am an officer. I am President. I am President of the corporation which operates this elevator at Tina. Its capacity is 8,000 bushels. I have been President of the company ever since it was organized something over ten years ago. I have never been active in conducting the business. The capital stock is $5,000.00, and I own $200.00.

I know nothing about the purchase and sale of grain futures on these exchanges, and did not in 1924 when I talked to McDonough. I did not know what hedging trans-

actions were. In my first talk with McDonough I told him I didn't want to get into anything that I would be reliable for.

"Q. What do you mean 'being reliable for'? What did you mean by that?

A. Accepting delivery on 40,000 bushels of Winnipeg wheat or to deliver 40,000 bushels of Chicago wheat."

I had a good many dealings with Mr. McDonough. When I made and entered into these transactions, I sometimes gave him an order. I did not do this always. He made deals for me or transactions were started for my account without my knowing anything about it; but I might explain that I didn't repudiate them and when he explained them I made more of the same.

"Q. Have you repudiated any since?

A. No sir."

* * * * * * *

"Q. Now, whenever any of those contracts were entered into between you and as you say, Mr. McDonough, that you [fol. 157] made a purchase, for instance, did you later make a sale against that purchase before delivery time came?

A. Yes, sir.

Q. Did that in every instance?

A. Always.

Q. Never did anything else?

A. No, sir.

Q. And when these purchases against sales were made they were made at your direction, were they?

A. Usually.

Q. And that was in accordance with your intention before you entered into these dealings, that was the way you intended to do it before, wasn't it?

A. What?

Q. That is to say, before the time of delivery arrived you were going to get rid of your contract, that is the way you intended to do when you first started to deal with McDonough?

A. That is the instructions I gave to him.

Q. And he carried them out, didn't he?
A. Yes, sir."

Redirect examination:

The trades I referred to when I said McDonough sometimes made them without orders from me were spreads; he made sales without my knowledge and consent, and afterwards told me about it. He gave me advice in connection with it and told me why he had. He explained the proposition of why one market was found to fall and the other market bound to raise, and led us to think we were bound to win and make a potful of money. I said, "Mac, if it looks so good as all that, we will take some more of it." I acted on his advice in those instances. Two or three times he came to my house to see me about these matters. I don't remember just what he said only in a general way. He discussed the market proposition and decided as to what we should do.

---

Amos Dickson testified for defendants as follows:

I live in Carrollton, Missouri. I have lived there 23 years. I was in the clothing business in 1924 at Carrollton. My brother was my associate. His name is Joe P. Dickson. He is one of the defendants in this case. I know where the Florence Hotel is there. I remember the Uhlmann Grain Company opening an office there. E. S. McDonough was in charge of it. I became acquainted with him. I learned from him that he was representing the Uhlmann Grain Company in the operation of that business. I speculated on the Board of Trade. I came to start it because he came in our place of business and solicited. I mean our store. He would tell about these trades or [fol. 158] spreads and how to make some easy money, and I told him I couldn't take care of any wheat at all. "Well," he said, "start in a small way," so he bought me 5,000 bushels and we understood there would be no delivery and I couldn't pay for it because at the time I was obligated at the bank. I couldn't take any wheat at all. I told him that. He said, "Alright, you will never have to take it." I bought 5,000 bushels. I don't remember what Board

of Trade he claimed to have bought it on. I continued trading about five months. The largest amount that I contracted for was about 40,000 bushels. We first bought 5,000 bushels when we first started to trade. It went down, and he said it would be alright, "We are going to make some easy money when it got a little lower," and we bought more, and finally we did make money, but later on we lost. How I came to deal in 40,000 bushels, he said, "Buy 5 or 10 more and it will go back up and you will make some good money." I understood I wasn't compelled or wasn't to receive the 40,000 bushels. That was from conversation between Mr. McDonough and me right from the start. I sold some wheat too. I was on both sides. In cases where I sold I was *was* not told to deliver the wheat. That was from an understanding between me and McDonough.

"Q. How was the—how was your winnings or losings to be ascertained?
A. The difference between the price of the market.
Q. The difference between the prices of the market?
A. Yes, sir.

There was no intention on my part at any time to accept delivery of wheat that I bought or make delivery of wheat that I sold. I have never been in any other business but the clothing business. I was never interested in any elevator. I am not a grower of wheat. I could not have made any preparations to accept delivery. I could not have done that. I would not have been financially able to have bought the wheat and paid for it. I was not financially able to accept delivery of the wheat I bought and pay for it. McDonough knew that absolutely. I told him. Told him I was obligated at the Carroll County Trust Company. I was obligated there at the time for $4,000.00. I wasn't worth that much. Not a fourth—about a fourth. At that time I was largely obligated to wholesale houses. I bought on credit. I explained that to McDonough, made it known to him.

"Q. You may state what reliance you placed on Mr. McDonough in this business about taking his advice?
[fol. 159] A. I placed it all in him because I knew nothing about it."

At that time I had never had any experience in the grain market. I had never speculated on the market before. I did not know what a spread was before he explained it to me. This explanation, in a brief way, was the education I got on the subject from McDonough. While this trading was going on, McDonough came to our place of business and said he had received some letters, and when the trades were going against us he advised us to stay in, and at times advised us to buy some more grain. As to these letters, he said he knew it would come out alright, and we would make some money. I sold large quantities as well as bought. McDonough did not tell me whom he bought from and when he sold he did not tell me who the buyer was. I never had any knowledge or information from McDonough or anyone else as to who was the purchaser or seller of the grain I dealt in. The only person I knew connected with the Uhlmann Grain Company, I operated through was McDonough. I was never at any time asked to deliver any of the grain I sold, or to accept delivery of any that I had bought. It was understood I wouldn't receive any. I remember McDonough quoted the advice of Paul Uhlmann about the last spread. He said we would make a lot of money and we couldn't lose. He came by the store and told me he had bought 5,000 bushels for me and it was sure going to be a dinger; he would certainly make some money out of it. I had not given him the order for that 5,000. He did that without my knowledge or consent. He made sales or closing of my accounts and acted with reference to my account without my knowledge or consent.

"Mr. Stinson: I move that line of testimony be stricken out. There is an admission those accounts are correct. It is going too far outside of these pleadings, that the Uhlmann Grain Company did anything out of the knowledge of these defendants. There is no such thing pending.

The Court: There was no plea of failure of consideration, or that the contracts were unauthorized. Your plea is that they were void because they were illegal.

Mr. Jones: That is true, but we pleaded as gambling and my idea is that any evidence that will interpret the contract to that respect will be admissible.

The Court: If you think it will bear on that question, the court will admit it.

Mr. Jones: That is the purpose of it, your honor.
[fol. 160] The Court: Upon the theory that there is no consideration, that is to say, it was an unauthorized contract. The court will admit it upon the theory——
Mr. Jones: That is the theory I am offering it upon, your honor.
The Court: Very well; subject to—that is, upon the theory advanced by counsel, it will be admitted.

(To which action and ruling of the court the plaintiff, by counsel, then and there at the time duly excepted and still excepts.)

Mr. Jones: It goes to tend to establish the operation of a bucket shop in violation of a written contract.
The Court: And for no other purpose."

As to my statement that he made trades for my account without my knowledge or consent, I refer to the last trade. After he had purchased, he came by our place of business and told me he had purchased this for me. We talked about it and I asked him if he was sure it would make some money, and he said he knew it would. It was bound to make money.

Cross-examination:

On my first 5,000 bushels of wheat purchased, I did not put up a margin. I put margins up from time to time afterwards. When these transactions were closed out, I very seldom received any checks. I received some. I do not know as a matter of fact that I received more than I paid out. I never tried to figure it out. I do not know, as a matter of fact, that I received about $500.00 more than I paid out in these transactions. I won't say I did not.

I never traded on the market before until I had this conversation with McDonough and I began dealing with him then. He did not explain at the time what it meant by "buying a future." That is when I bought my first 5,000 bushels. I never understood what a future was, knew nothing about it at all, but I did have a distinct understanding with him at the time these transactions were initiated that I was never going to take delivery on what I bought. I insisted upon that. And I insisted in this first conversation that if I contracted to sell anything that I was never

going to deliver it, absolutely, never deliver. I remember that I had that conversation with him the first time I talked to him. He said he would take care of that. He did not explain it to me. I insisted upon not being required to take [fol. 161] delivery because I knew I wouldn't take that. I knew that if I did not take delivery it would be changed over to some other month.

"Q. Now, after each one of these transactions was closed, did you get a written confirmation from the Uhlmann Grain Company?

A. At the close.

Q. Well, if you would give an order to buy, or give an order to sell, did you get a written confirmation from the Uhlmann Grain Company, did you read that over?

A. Yes, sir.

Q. Did you know what you read?

A. Sometimes I did and sometimes I didn't."

(Counsel here hands paper to witness.)

I don't remember whether I got this. That is my name on there. The date is March 31, 1924. I don't remember when I began trading. It was in the Spring of 1924. I don't remember whether the first transaction was March 28, 1924. It was sometime in the Spring.

"Q. Did you understand if you gave Mr.—or gave an order for the purchase of so much grain on market and for the sale of an equal amount of grain on another——

A. Yes, sir.

Q. Did you understand that the Uhlmann Grain Company was to execute your orders for you?

A. Yes, sir.

Q. And act as your agent?

A. Yes, sir.

Q. In making these purchases?

A. Yes, sir.

Q. Either in Winnipeg or in Chicago, or both?

A. Yes, sir.

Q. And that these transactions were to be consummated on those markets; you understood that, Mr. Dickson?

A. Yes, sir.

Q. Then you understood that the contract to sell was the contract whereby the Uhlmann Grain Company, acting for

you, agreed that during a certain month in the future that you would sell so many bushels of wheat?

A. Yes, sir.

Q. On this market?

A. Yes, sir."

I did not understand that where I was seller, or entered into a contract to sell, I had the option of making delivery [fol. 162] any time during that month. There was never no delivery at all. We never make any delivery.

"Q. Didn't I understand you to say McDonough told you you would get out before the delivery month?

A. He said he would take care of that.

Q. Did you understand that was what would happen?

A. Yes, sir."

I knew nothing about the matter. I took his word for it that he would take care of it. I knew nothing about trading on the Board of Trade at all. He said he would execute the order on the Board of Trade for me. He did not tell me the way it would be handled. I knew nothing about it, as I said before.

"Q. I want to know what he told you. Did he tell you the deals would be handled by the Uhlmann Grain Company on those boards of trade?

A. Yes, sir.

Q. And you also understood that before the delivery month came around, either on the purchase or sale, you could get out of it?

A. Yes, sir.

Q. And how did you understand you were to get out of it; out of delivering?

A. That was up to him.

Q. That was up to him?

A. Yes, sir. He was the main guy in all of it.

Q. So that as far as these transactions were concerned, and every one of them, you weren't to have anything to say if you bought, for instance, wheat for future delivery on the Chicago market as to when it was to be sold. You weren't to have anything to say about that at all?

A. Sometimes I did and sometimes I didn't.

Q. When did you, and when didn't you?

A. At times he would use his own pleasure; other times he would call up and say it was a good time to sell, or that we had too much.

Q. Then you would tell him to go ahead?

A. He had already done it.

Q. He made sales sometimes without your knowing it, and purchases?

A. Yes, sir.

Q. And sometimes you gave him the instructions?

A. Yes, sir."

I did not watch the market. He would tell us when to sell and when to buy. I didn't exercise my own judgment at any time at all. I knew nothing about it. That is, I didn't exercise my judgment in the matter much, just some.

[fol. 163] "Q. Now, directing your attention to this language of this confirmation: "All transactions made by us for your account contemplate the actual receipt and delivery of the property and payment therefor." Did you read that?

A. I read that on there where it reserved the right to close you out when the margin run out, and they didn't do that until the last deal; no, sir.

Q. Well, did you read just that part of it? Is that all you read, or did you read all of it?

A. That was the main part to me.

Q. I didn't ask you what the main part to you was. I asked you if you read—what you read. Did you read all of it?

A. I don't remember.

Q. "All transactions made by us for your account contemplate the actual receipt and delivery of the property and payment therefor." Did you read that?

A. I expect so."

I never paid any attention to the language of these confirmations, but those right there. I forgot whether I read the red one or the yellow one. Mine was black and white, and red and white.

"Q. Which did you read, both of them?

A. I read both of them."

I read this language:

"All purchasers and sales made by us for you are made in accordance with and subject to the rules, regulations and customs of the chamber of commerce or board of trade where the trades are made, and the rules, regulations and requirements of the board of directors and the amendments that may be made thereto."

And to these transactions which he executed for me without an order, he was the main guy; I did not tell him beforehand to use his own judgment as to when any transactions started for me should be closed out.

"Q. Did you protest against his doing this for you?
A. I asked if he thought it would be all right, and he said, 'Yes.'
Q. You mean each time he closed out a transaction for you without your knowledge, you asked if he thought that was the thing to do, and he said, 'Yes'?
A. Yes.
Q. And you agreed to it?
A. Yes.
[fol. 164] Q. So there were a lot of those transactions that were handled either because you told him what to do, or acquiesced in what he did for you?
A. I suppose so.
Q. Every one of those transactions he handled for you in the way you have described, was done either because you told him beforehand to close it out, or because he closed it out and later you told him it was all right?
A. Yes, sir."

I did not watch the market. I never was in the office until the market went against us and he called us down there one evening.

I knew I wouldn't have to take any wheat delivery because I couldn't pay for it. I don't remember how I would get out of it, but he said he would take care of it and I left it up to him. He told me I wouldn't have to take delivery, he would take care of it. I had heard him talking before, and if you didn't close out when the month was up, you would change over in some other market. I have heard him tell different gentlement that; he would change it over. I don't remember when I heard that told.

"Q. Isn't that a fact you had purchased in Winnipeg for October and they were changed to November?

A. On the last trade you are speaking of?

Q. Yes, sir.

A. It was changed over without our consent."

I left it to him to get us out of things before the delivery month arrived.

"Q. I see. Now, if I understand you correctly, your testimony is that you didn't know when you were dealing with Mr. McDonough there, how, if you wanted to get out of the delivery that you had contracted to take for a given month, you didn't know how that could be accomplished?

A. I told you I heard him tell other gentlemen it would be changed. If it run up to the last of the month, say if it had been made the last of April, it would be changed over to some other month.

Q. And is that the way he took care of you?

A. Well, I thought—I didn't believe up until the last trade he ever changed any, and then he changed without my consent.

Q. Then up to the last trade he never did take care of you in the way you thought you were being taken care of. He [fol. 165] didn't make any change of delivery months until the last one, and that was done without your consent?

A. I don't remember.

Q. Didn't you just so testify? What is your recollection about it?

A. I said this: That on the last deal, that he did change us over into another month without our consent.

Q. Up to the last deal he never did change you over to another month?

A. I don't remember.

Q. I hand you your account of all your transactions there, and I will get you to look at this and show me where Mr. McDonough ever changed you over to any month in any of these transactions.

A. I don't know anything about this.

Q. You don't know anything about that?

A. No, sir.

Q. Don't you know, as a matter of fact, he never did change you over to any other month in any of these transactions except the last one?

A. I don't know."

As to whether I always sold out before the delivery month arrived, that was up to him. When payment came good, or if it was bad, he would suggest selling or getting out.

"Q. I want to know whether or not when you exercised your own judgment, which you say you sometimes did, whether you always exercised that judgment by cancelling out or trading out, and subsequently selling before the delivery month arrived?

A. I think he got us out before that time.

Q. You say you got yourself out sometimes.

A. Sometimes I would buy some grain and in a very few days it would go up and of course we would sell out and take our profit.

Q. So that you understood then, that when you bought grain and the price of it went up, that you could sell it then and take a profit, didn't you?

A. And if it went down we would take a loss.

Q. And you understood you were buying and selling grain for future delivery, didn't you?

A. Yes. But there was to be no delivery.

Q. Why did you insist upon there being no delivery?

A. I like I told you, I couldn't take care of it.

[fol. 166] Q. Why did you think you were having to insist upon not taking delivery under these contracts? What made you think to ask Mr. McDonough to be sure you wouldn't have to take delivery?

A. I told him I could not take care of it, and he said he would take care of it.

Q. In other words, Mr. McDonough gave you to understand when you made a contract to purchase wheat during a certain month, he would take care of it and sell it for you before the time arrived?

A. I suppose.

Q. That is what you did in every one of these transactions except the last one, which you say was against your consent. You sold out against protest and bought against protest?

A. He would advise us what to do.

Q. Isn't it a fact that is what you did?

A. I said he advised us what to do.

Q. I didn't ask what his advice was. I am asking you if it isn't a fact that is what you did before the delivery month

arrived, you sold out your purchase and you bought out your sales?

A. I suppose it was.

Q. And that is what you intended to do all along in all of these dealings that you had?

A. Sell out without delivery?

Q. Yes, sir; and buy out without a purchase before the time came around, and that is what you did whenever you exercised your own judgment, didn't you?

A. I suppose.

Q. Now, I want you to tell the court whether you got these confirmations, and these slips here, after every transaction that was initiated was closed out?

A. Yes, sir.

Q. Did you ever make any objection to any of them?

A. I don't believe so.

Q. And whenever you made a profit on these transactions, you took down your profit?

A. And glad to get it back as long as I had it."

Redirect examination:

On the first deal I purchased I didn't put up a margin, but I did during the time. I put the money up at Carrollton, Missouri. I gave it to E. S. McDonough. It was given in connection with the transactions I was carrying on. All of the transactions and deals I had with McDonough were made in the town of Carrollton, Missouri, and nowhere else. I never transmitted any money to the Uhlmann Grain Com- [fol. 167] pany at Chicago. All the transactions I had and all the money I paid was right at Carrollton.

At the time we began these operations I did not know in what way or manner these trades were made on the Board of Trade. I do not know to this day how they were made by the Uhlmann Grain Company, only just from what I have heard in the court room. I got these statements, but they did not tell me how it was done. At the time I gave my order I did not know how they were going to be executed. I suppose selling short is when you haven't got it. I did not know how these operations were carried on at the time.

(At the conclusion of the testimony of this witness, the following occurred:)

"Mr. S. J. Jones: It is stipulated and agreed that defendants I. N. Calvert, Charles T. Dickson, Ernest Miller and Joe Dickson, if called and sworn as witnesses would deliver the same testimony as was delivered by A. P. Dickson with reference to their transactions with the Uhlmann Grain Company at Carrollton, Missouri, during the year 1924 and involved in the present cases now against them in this court and under consideration, of course, the court will so consider the testimony.

The Court: Now, as I understand it, that is agreeable to plaintiff?

Mr. Stinson: Yes, sir; agreeable to plaintiff."

---

I. N. Calvert testified for the defendants as follows:

I live in Carrollton, Missouri. Have lived there about 18 years. Am fairly well acquainted in the county. I lived there in 1924. I was acquainted with Leo Archibald at that time. He was engaged in some farming and in the automobile business some. At that time he was successful in the automobile business.

(At this point counsel for plaintiff and for defendants agreed that counsel for defendants might state the occupation of certain persons in Carrollton, plaintiff's counsel objecting to the materiality of it, but conceding the correctness of the statement. Here counsel for defendants dictated the following into the record.)

"Mr. S. J. Jones: Leo Archibald at the time was engaged in business in the town of Carrollton. Dr. Boss Brown, at Boston, Mo. I will just pass up those I don't know. J. O. [fol. 168] Busby at that time was running a small country store 9 miles east of Carrollton. I. N. Calvert was an ice dealer. Earl Cheesman was an employee of the Carrollton Republican, a publishing house at Carrollton. Crosden & Crosden were operating a small elevator at that time. C. R. Dickson was a farmer. S. P. Dickson, a farmer; Mrs. W. L. Dickson, a farmer's wife; W. L. Dickson, farmer; D. L. Dickson, farmer; John M. Griffin, a farmer; I don't know the next man; C. G. Grossman, insurance agent of Boston; George Hollister, a farmer east of Carrollton; J. W. Hollister, insurance agent at Carrollton; Hugh Huddleston,

clothing business at that time, but now at some other town; Huddleston Brothers, farmers; C. I. Jacobs, no special occupation; C. Joseph, an employee of the Prairie Pipe Line Company; Mrs. E. S. McLean, wife of laundryman; E. S. McLean, laundryman; Ernest Miller, farmer; H. R. Mosley, farmer; R. E. Mosley, farmer; Mrs. C. S. Mosley, farmer's wife—no, just housewife; C. S. Mosley, manager of the Farmers' Elevator in Tina, Mo.; S. E. Mosley, farmer; Walter Scott, no occupation; Ray Dameron, farmer; Robert Stout, farmer; Ray A. Thompson—don't know him—traveling salesman; Joe Kenman, works for undertaker."

---

C. T. Dickson testified for the defendant as follows:

I live south of Tina, Missouri, fourteen miles from Carrollton. I am a farmer. I signed these notes that are sued on in this case. I had a conversation in Chicago with Mr. Fred Uhlmann about my state of the account with Uhlmann Grain Company. We gave these notes because we put up margin until we couldn't raise any more money, and McDonough advised us to go to see Fred Uhlmann at Chicago and make some arrangements to keep on trading. We went, and he told us to give our notes and we would keep on trading until we traded these notes and it never would cost us any money—trade it out.

(On motion of plaintiff's counsel the last part of the answer was stricken out. Later the testimony was admitted with the proviso that it was not for the purpose of challenging the account itself.)

I gave the note after I had this talk with Mr. Uhlmann. We came home and was home a day or two, I don't just remember, a night or two after that Mac came out and we gave the notes. I mean by Mac, McDonough, the Uhlmann Grain Company man at Carrollton. He came out to Tina to [fol. 169] get us to sign these notes. We signed them and delivered them to him. We were behind at the time and had sustained some loss. These notes were given for more than we were behind, way yonder. We kept on trading, just gave

the notes and had them credited to go on trading and get out of this thing.

"Q. After you gave the note what happened?
A. Never gave us any trade.
Q. Closed you out then?
A. Yes, we was closed out. I don't know whether it was right then or not.
Q. There were no more trades?
A. After he got our notes that ended it. I tried to make another trade with Mac on the way home."

(On objection of counsel for plaintiff that the correctness of the account sued on had not been challenged and had been admitted in open court by defendants' counsel, it was stated by defendants' counsel that the purpose of the offer was merely for its materiality, if any, on the question of the legality or illegality of the transaction.)

Cross-examination:

Tom Cramer went with me to Chicago at the time we went up there. We had sustained losses and had no money to pay up. At that time I don't reckon we had any margins up or we wouldn't have had to went. We went there to settle this thing some way. We wasn't on the beat. None of us were aiming to beat it. We went up there to get a credit until we could get out of this fraud.

"Q. In other words, you went up there for the purpose of getting Mr. Fred Uhlmann to let you give notes instead of cash?
A. That is what we done.
Q. He didn't tell you if you gave those notes if you sustained any greater loss that you wouldn't have to pay them?
A. He said we wouldn't get into any more losses. If we did we would get into another deal and work it out.
Q. In other words, when you left Chicago you had an idea you could give these notes in lieu of margin and that is what you were to give them for, in lieu of cash?
A. Yes."

When we left Chicago he made us believe that he was guaranteeing we wouldn't sustain any more losses. We believed then we couldn't possibly sustain any loss; that is

the idea them people gave us at the time, was that we would never lose any money.

[fol. 170] "Q. And that is why you went into this thing, because you understood by getting into it you could make some money and you couldn't lose anything?
A. Yes."

I am positively sure we did not get to make any more trades after these notes were given. These notes were signed the night they were wrote up. They are dated October 8, 1924. McDonough wrote them right there in my son's house, and we signed them, I think, at the time McDonough wrote them.

(At this point counsel for plaintiff called the court's attention to the fact that these notes were dated October 8, 1924.)

These notes were given for Mr. S. T. Dickinson. He is my son. I have four sons. These notes were given for three of them. That boy and me traded together, but we were trading in his name.

My son and I, when we were trading in his name, got these slips after the trades were made; I reckon we did.

I do not remember that Exhibits 32, and 32-a to f, inclusive, show of a trade being made for S. P. Dickinson on October 16, 1924; but I don't deny it. I do not know whether we made a trade, S. P. Dickinson made a trade with Uhlmann Grain Company on October 16, 1924. I don't know whether when we went to Chicago we had open contracts for the sale of October Winnipeg wheat. I don't know whether we had some open contracts. I do not remember whether anything was said in Chicago about transferring our October contract to November, and making new ones. I remember that Fred Uhlmann told us if we didn't get out of this debt on that trade we was in, we would get into another one, and one that would work. I don't think we got out of our October spreads and into new ones. I don't think that is what he said he would do for us.

"Q. Is that what he agreed to do?
A. Yes.
Q. Is that what you wanted him to do?
A. We wanted to get out of this debt.

Q. And you wanted to get out of this October spread and get into a November spread?

A. I didn't expect that—we wanted to work out—I don't know what we wanted to do."

---

O. W. Rowe, recalled as a witness for the defendants, testified further as follows:

I have ascertained the number of bushels of wheat these parties bought on the Winnipeg market. I. N. Calvert had [fol. 171] 200,000 bushels of Winnipeg. 30,000 at Minneapolis and 10,000 at Kansas City. Joe Dickson had 175 of the October Winnipeg. I mean by that the whole time. At Minneapolis 55,000. None in Kansas City. Calvert had 401,000 bushels at Chicago. Joe Dickson had 355 at Chicago. A. P. Dickson had 165 of the Winnipeg, 340,000 of Chicago, 50,000 bushels Minneapolis. Ernest Miller had 220,000 Winnipeg, 280,000 bushels at Chicago and 40,000 Minneapolis. S. B. Dickinson had 265 Winnipeg, 320 Chicago, 20,000 bushels Minneapolis. W. L. Dickinson had 90,000 bushels Winnipeg, 115,000 Chicago, 10 Minneapolis; G. R. Dickinson had 20,000 bushels Winnipeg, 50,000 bushels Chicago.

These transactions are totals and they go approximately over a period of a year.

These five accounts were the largest accounts we had. They all dealt in larger amounts than all the rest of them combined. I could not estimate the total amount dealt in by all of our Carrollton customers during that period.

Recross-examination:

These dealings about which I have just testified extended over a period of ten or eleven months. I would say that the largest amount dealt in by any of them at any one time would be not more than 75,000 bushels.

From an examination of these P. and S.'s before me, I can testify that it is a fact that subsequent to the 8th of October, 1924, all of these defendants had transactions with the Uhlmann Grain Company. All of these accounts were closed out some time in November, 1924. If Mr. Dickinson testified there were no trades ever made subsequent to

that time, he is mistaken, the records show he is mistaken. This 10,000 bushels of wheat Mr. Calvert trade- in in Kansas City showed a profit of $1,000 and no claim is being made by plaintiff for that.

"Q. Now, I will ask you whether or not you have gone over all of these P. and S's and whether or not you can state it to be the fact that in each one of the transactions carried on by each one of the defendants, and in every one of the transactions involved in these five suits, with the exception of the very last one, I understand the Uhlmann Grain Company closed out itself, is that it?

A. That is correct, yes.

[fol. 172] Q. With the exception of the last one, I will ask you whether or not each transaction carried on, executed by each defendant, that before every delivery month against which a purchase or sale was made, that the transaction was closed out, if it were a sale, by a purchase; and if it were a purchase, by a sale, before the time arrived when it would be necessary to take the purchase or make the delivery?

A. That is correct. With the exception of the item—the Winnipeg October being changed over to the November, on all previous transactions before that they were closed out before actual delivery was made.

Q. And closed out by the defendants themselves?

A. Yes, sir."

I know what happened when these October sales on Winnipeg were transferred to November; I know what occurred.

"A. The accounts all were short for Winnipeg October and long on Chicago December at that time and about the middle of the month down—or the first part to the middle of the month, I would say, the Winnipeg October wheat, which the customers were short, was purchased, and at the same time of the purchase the November was sold in Winnipeg. In other words, bought in the short Winnipeg October and sold the November wheat there against which they were short October. Instead of being short in Winnipeg October they were short Winnipeg November and the other side stayed exactly as it was.

Q. That is to say, the Chicago December they had agreements to sell in October, they had agreements to buy Chicago wheat in December?

A. That is correct.

Q. You say about the middle of October the sales in Winnipeg were closed and purchases—or sales were made for November delivery instead of October?

A. Yes, sir."

The term "option" in connection with trading is merely meant for the seller and the seller only. The seller has the option of making delivery during any day in that month. That is the rule under the rules and practices of all of the Boards of Trade. So that these men who had agreements to sell October Winnipeg wheat had the option in October of making delivery any time in that month up to the last day of the month. The time was getting close when they would be required to deliver or fail to deliver their agreements to sell October wheat. That is the time these gentlemen went to Chicago and it was closed out, these October agreements to sell Winnipeg wheat were closed out by offsetting purchases; and new options on Winnipeg wheat [fols. 173 & 174] were taken for the sale of November wheat, and that was after these notes were executed, after the dates of these notes.

Redirect examination:

I don't know whether these last closeouts were at the direction of these defendants or not. If I testified these defendants gave direct orders, I was mistaken. Their action was unknown to me personally.

The account of Dickson was closed sometime after these notes were given. According to this sale bill, beginning October 6th, 1924, there was some grain bought and sold on this account, and it was closed out. On the 16th of October, the short Winnipeg October was bought in and at the same time, on the same day, the Winnipeg November was sold against the purchase of this October, and that is an account of the transaction.

DEFENDANTS' EXHIBIT "F"

Defendants' Exhibit "F" is an accounting of purchase and sale of 10 Chicago December wheat. There is a debit

on this one of $1,170.03. That means he lost that much. Both transactions were on the same day. The Kansas City was bought and the Chicago was sold on the same day. That is what I mean. Taking the two transactions together, Mr. Calvert was behind a little.

DEFENDANTS' EXHIBIT "G"

Defendants' Exhibit "G" is the final account rendered to Mr. Calvert. On October 1, his balance was a credit of $1,223.74, but the account was closed on the 8th of November and showed him a loss of $3,886.20. In making up that final accounting, this Kansas City trade was embraced in it.

Defendants' Exhibit "E" is in words and figures as follows:

DEFENDANT'S EXHIBIT "E"

# UHLMANN GRAIN
## GRAIN MERCHANTS

No. ~~3825~~ 5823

ACCOUNT PURCHASE AND SALE OF 10 Prg Nov W & N

For Account and Risk of Ernest Miller

BOUGHT — SOLD Jno Mo

| Date | Quan'y | Commodity | Price | Cost | Date | Quan'y | Commodity | Price | Proceeds |
|---|---|---|---|---|---|---|---|---|---|
| 11 17 | 10 | NW | 161¾ | 16 43 75 | 10 | 16 10 | NW | 163 | 16 30 00 |
| | | | | | | | DUPLICATE | | |
| | | Commission | | 25 00 | | | | | |
| | | Stamp Tax | | 60 | | | | | |
| | | Gain | | 130 65 | | | Loss | | |
| | | | | 16 30 00 | | | | | 16 30 00 |

E. & O. E.

To Cr 130 65

Kansas City, Mo., 11-17 1926 Pros Con Exchg 2 16

Form 10 Net Cr 130 49

# UHLMANN GRAIN COMPANY

FRED UHLMANN, PRESIDENT
PAUL UHLMANN, VICE-PRESIDENT
RICHARD UHLMANN, SEC'Y. & TREAS

338 BOARD OF TRADE

KANSAS CITY, MO.

No. ~~2016~~

11/12 1924

Ernest Miller
Lima Mo

wpg

DUPLICATE

*We have this day bought for your account, at ~~Chicago, Ill.~~*

All transactions made by us for your account contemplate the actual receipt and delivery of the property and payment therefor. We reserve the right to close these transactions when deposits are running out, without giving further notice. We also reserve the privilege of clearing all transactions through Clearing Associations, if there be any, from day to day in accordance with the usage, rules or regulations of the Exchange where the trade is made, prevailing at the time. All purchases and sales made by us for you are made in accordance with and subject to the rules, regulations and customs of the Chamber of Commerce or Board of Trade where the trades are made, and the rules, regulations and requirements of its Board of Directors, and all amendments that may be made thereto. This contract is made under authority of the Act of Congress known as "The Future Trading Act."

| Quantity | Delivery | Article | Price | Bought of | Address |
|---|---|---|---|---|---|
| 10 | W | W | 161 1/8-1/4 | wpg | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |

We do not consider orders open from one day to next, unless by special instructions.

Form 43

UHLMANN GRAIN COMPANY

K. & O. E.

BY AB

# UHLMANN GRAIN COMPANY

FRED UHLMANN, PRESIDENT
PAUL UHLMANN, VICE-PRESIDENT
RICHARD UHLMANN, SEC'Y. & TREAS

338 BOARD OF TRADE

KANSAS CITY, MO. No

10/16 1924

Ernest Miller
Ina Mo

DUPLICATE

*We have this day sold for your account, at ~~Chicago, Ill.~~* wpg

All transactions made by us for your account contemplate the actual receipt and delivery of the property and payment therefor. We reserve the right to close these transactions when deposits are running out, without giving further notice. We also reserve the privilege of clearing all transactions through Clearing Associations, if there be any, from day to day in accordance with the usage, rules or regulations of the Exchange where the trade is made, prevailing at the time. All purchases and sales made by us for you are made in accordance with and subject to the rules, regulations and customs of the Chamber of Commerce or Board of Trade where the trades are made, and the rules, regulations and requirements of its Board of Directors, and all amendments that may be made thereto. This contract is made under authority of the Act of Congress known as "The Future Trading Act."

| Quantity | Delivery | Article | Price | Sold to | Address |
|---|---|---|---|---|---|
| 10 | N | W | 163 | wpg | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |

We do not consider orders open from one day to next, unless by special instructions.

Form 22

UHLMANN GRAIN COMPANY

E. & O. E.

BY AB

[fol. 181] (NOTE.—Defendants' Exhibits "F" and "G" are missing.)

Recross-examination:

In making up the accounting, the Kansas City transaction showed a credit of $1,095 and some cents, so that in this final accounting the Kansas City deal showed a credit and not a debit to Mr. Calvert. The credit of that amount of money, $1,095 was placed to his credit in his account. On the same day that the Kansas City wheat was bought, an equal amount of Chicago wheat was sold. The transactions were closed out at the same time. The Kansas City transaction resulted in a profit of that much money. Credit is given on the final account for that.

A. T. Dickson, who testified in this case, took out more money in his dealing than he paid out. We sent him more money than he gave us in margins by $500.00. The same is true of some of the other defendants.

Redirect examination:

These commissions weren't due until the trade was closed out. The Uhlmann Grain Company never charged a commission on any sale that wasn't completed. Or on a sale that wasn't balanced by a corresponding purchase. In other words, the trade must be closed before we got our commission on the deal. The last trades were transferred from one month to the next month following, in Winnipeg. They were finally closed out. All of them were closed not later than November, 1924—the last of November, 1924.

Recross-examination:

They were closed the latter part of November, the 23rd or 25th.

The Uhlmann Grain Company closed out these October transactions and made the November transactions in the same way the others were made with these defendants. Uhlmann Grain Company stood behind the deals themselves, and in these transactions some of these defendants had notes up instead of cash. Others had no margins at all. The Uhlmann Grain Company were carrying those on its own responsibility and sustained these losses in these last transactions.

Redirect examination:

With reference to Mr. Dickinson's account, they were existing trades and transferred to November. They were [fol. 182] closed out the latter part of November. The November trade was new trade entirely. It was not the same trade as the October trade. Their short interest in October in Winnipeg was bought in at the same time the November was sold. The November was a new trade. The October was bought in. They were short November in Winnipeg and they were long December, and in that December the short October wheat in Winnipeg was bought in by a like amount Winnipeg and at the same time the November, which would be a new trade, was sold. These October trades got into November in this way. The November Winnipeg against the sale of Winnipeg November. They were closed out at the same time.

(Plaintiff's counsel admits that at that time in 1924 the population of Carrollton was about 3,200.)

These P. and S.'s, were sent to each of these defendants immediately after there was a purchase which had been closed out by a sale. They were notified of every transaction made for their account. That is what these P. and S.'s, are, they were made at the close of the two transactions in each instance for these defendants, every one of them, and sent through the mail from Kansas City.

"Mr. S. J. Jones: The understanding is that the contract was shown on those bills or whatever you call them, both on the white ones and the red ones, they have all been admitted in evidence.

Now, I move at this time to exclude, I think it is Exhibit 1, purporting to be the telegram relating to sale, for the reason that it does not connect the defendants with it, no evidence in the case bearing on any issue in the case. I am referring to the matter your honor overruled, at the time, a ruling that I could exclude it.

The Court: The motion will be denied.

Mr. S. J. Jones: I move to exclude that part of witness Hardy, relating to his testimony before the Congressional Commission at the time the Congress had their considera-

tion for grain futures for the reason it is incompetent and throws no light upon the case, not binding upon the defendants.

The Court: The motion will be denied, because he qualified as a grain expert and the court accepted his testimony, as he will do, to elucidate the meaning of a lot of terms involved in this case.

[fol. 183] Mr. Righter: The defendants move that all the exhibits and all of the testimony which were introduced with reference to the specimen or sample transactions which were claimed to have been characteristic transactions on the Board of Trade of the Uhlmann Grain Company being excluded on the ground for the reason that there has been no showing in this case that the transactions which were carried or purported to have been carried on for these defendants were carried on in similar manner.

The Court: The motion is denied."

This closed the defendants' case and plaintiff offered no rebuttal; but at the close of the case asked leave to amend the petition by asking for interest due on the balance to plaintiff. It was agreed that the records should show such an interlineation without its being rewritten.

---

### Defendants' Motion for Judgment

At the close of all of the evidence, counsel for defendants moved the Court to declare the law to be that under the pleadings and Statutes, the plaintiff is not entitled to recover against any of the defendants. The motion was denied, and exception taken.

(This was all of the testimony.)

---

### Plaintiff's Requested Findings of Fact

Thereafter, and before the entry of the judgment of the Court, and pursuant to authority given by the Court, the plaintiff requested the Court in writing to make the following findings of fact:

1. In all the transactions involved in these suits the plaintiff acted as broker for defendants in the purchase and sale of grain for future delivery, and in no case did plaintiff enter into any other than a brokerage contract with any defendant.

2. Every purchase and sale was executed by plaintiff for defendant on the Grain Exchange in Chicago, Illinois, Minneapolis, Minnesota or Winnipeg, Manitoba. None of the contracts of purchase or sale involved in these suits was executed in Missouri.

3. Every transaction was a contract of purchase or sale of grain for future delivery, executed on grain exchanges by plaintiff in behalf of defendants on the one side, in which the plaintiff was a clearing member of the exchange where executed and in which the other party to the transaction, either acting for himself or an undisclosed principal, was also a clearing member.

[fol. 184] 4. Every contract of purchase or sale executed by plaintiff for defendants was carried out in conformity and in compliance with the rules of the particular grain exchange on which it was closed.

5. Every contract executed by plaintiff on behalf of defendants actually called for the purchase or sale of grain for future delivery and was evidenced by a memorandum in writing under which, and under the customs and rules of the exchanges were executed, the parties were obligated to take or make delivery, or to respond in damages for failure to do so. That under the custom and practice existing and under the rules of the exchanges, offsetting or ringing purchases or sales were permitted in lieu of the actual delivery of grain contracted for.

6. Every transaction involved in these suits initiated by a purchase or sale, was offset by a sale or purchase executed in the same manner as the initiating purchase or sale. Every purchase or sale was closed out by an offsetting transaction before the delivery time arrived and was executed by plaintiff on the orders and at the instruction of defendants, save and except as to some of the last transactions, which were closed out by plaintiff without instruction from such defendant at a time when defendant had no cash margin to protect his transactions.

7. At all the times in question plaintiff was a member in good standing of the grain exchanges on which the contracts of purchase and sale were executed, and plaintiff constantly maintained a margin with the Clearing House of each Grain Exchange as security for the performance of its contracts. All transactions of purchase and sale executed by plaintiff for defendants were contracted for on the Exchange in the name of plaintiff, plaintiff was responsible for their performance, and in each instance where the sale price was for an amount less than the purchase price, plaintiff acting as defendants' broker paid the difference to the Clearing House of the Exchange upon which the transactions were carried out. In none of the transactions did plaintiff profit or lose by a loss or profit to defendants. In all of them it acted only as a broker for defendants.

8. None of the purchases or sales were executed at Carrollton, Missouri. Orders were given by defendants from time to time at Carrollton to plaintiff's local office for execution on the Grain Exchanges at Chicago, Minneapolis and Winnipeg; but none of these orders were accepted by plaintiff at Carrollton. All of them were telegraphed to [fol. 185] Kansas City for acceptance or rejection, and if accepted, were carried out by plaintiff by telegraphic instructions emanating from Kansas City and by written confirmation of the execution of the order, which written confirmations would be mailed from Kansas City to the customer.

9. That no records of the accounts of plaintiff with the defendants were kept at Carrollton; that no moneys were paid out to customers in Carrollton, but remittances were mailed direct by check from Kansas City. All statements, all "P & S's," all confirmations of the execution of purchases and sales, were mailed to defendants from Kansas City. The Carrollton office merely received and tranmitted orders of its customers to Kansas City for execution on the Grain Exchanges designated in the customer's order.

10. None of the transactions of purchase and sale executed by plaintiff for defendant was a fictitious transaction. All of them were actually executed between clearing members of the Exchange where consummated, one of whom would be plaintiff acting for defendant.

11. In none of the transactions did plaintiff bet with its customer or take the other side of the deal.

12. In no transactions did plaintiff and defendant settle the gain or loss of defendant other than by ascertaining the actual difference between the price at which the commodity was bought and that at which it was sold. In no transaction of purchase or sale did plaintiff and defendant fix a fictitious profit or loss to defendant by an ascertainment of the difference between the contract price and the market price on the day fixed for delivery.

13. In each transaction, after an order to sell or purchase was executed by plaintiff in behalf of defendant, written confirmation thereof was immediately mailed by plaintiff to defendant.

Every written confirmation recited that "All transactions made by us for your account contemplate the actual receipt and delivery of the property and payment therefor."

There was no evidence that plaintiff's local agent at Carrollton had any authority to make a different agreement or contract with the defendants other than the apparent authority that may have been conferred upon him by the [fol. 186] establishment by plaintiff of the Carrollton office and the putting of its representative in charge thereof.

14. At all the times in question the Chicago and Minneapolis Boards of Trade had been designated by the Secretary of Agriculture of the United States as Contract Markets. At all such times the written records and written reports required by the Grain Futures Act and the rules and regulations of the Department of Agriculture were made by the plaintiff and the other clearing member of the transaction, and the contracts of purchase and/or sale were executed with the formalities required by the Grain Futures Act and the Grain Futures Administration of the Department of Agriculture.

15. In every contract entered into by plaintiff in behalf of defendants, plaintiff was legally obligated to perform the written terms thereof, and every such contract was actually executed and was evidenced by a written memorandum entered into between the clearing members of the Exchange in whose name the contracts were executed. Under the rules of all of the Exchanges on which the contracts of purchase

and sale were executed, the agreements were required to be made in the names of clearing members who were held responsible for their performance. None of the contracts of purchase and/or sale under the rules of these Exchanges could have been entered into in the names of defendants. In each of such transactions however the defendants were the undisclosed principal of plaintiff acting for them.

16. If defendants had no intention of accepting or making delivery of the grain called for by the contracts in question plaintiff had no knowledge of such fact and did not participate in the intention.

17. There was no evidence that the other party to the contracts entered into between plaintiff acting for defendants and such other party, either intended not to take or make delivery, or intended to perform the contract by a mere settlement of the difference between contract and market prices on the date fixed for delivery; or that such other parties to the transactions of purchase and sale intended mere fictitious or pretended transactions.

Each of which requests for findings the Court refused to give, to which action of the Court in the refusing of each of said requested findings of fact, the plaintiff separately and severally at the time excepted.

---

[fol. 187] FINDINGS OF FACT

And now the Court, of its own motion, makes the following findings of fact in each of the above styled cases:

1. In all of the transactions involved in these suits the plaintiff purported to act as broker for defendants in the purchase and sale of grain for future delivery, and in no case did plaintiff pretend to enter into any other than a brokerage contract with any defendant.

2. Every pretended purchase and pretended sale was executed by plaintiff for defendant on the Grain Exchange in Chicago, Illinois, Minneapolis, Minnesota, or Winnipeg, Manitoba. None of the contracts of purchase or sale involved in these suits purported to have been executed in Missouri.

3. Every transaction was a pretended contract of purchase or sale of grain for future delivery, purported to have been executed on grain exchanges by plaintiff in behalf of defendants on the one side, in which the plaintiff was a clearing member of the exchange where executed and in which the purported other party to the transaction, either acting for himself or a pretended undisclosed principal, was also a clearing member.

4. Every pretended contract of purchase or sale executed by plaintiff for defendants was purported to have been carried out in conformity and in compliance with the rules of the particular grain exchange on which it was pretended to have been closed.

5. Every contract purported to have been executed by plaintiff on behalf of defendants pretended to call for the purchase or sale of grain for future delivery and was evidenced by a memorandum in writing under which, and under the customs and rules of the exchanges were executed, the parties were obligated in form and pretense to take or make delivery, or to respond in damages for failure to do so. That under the custom and practice existing and under the rules of the exchanges, off-setting or ringing purchases or sales under proper circumstances, in good faith, were permitted in lieu of the actual delivery of grain contracted for.

6. Every transaction involved in these suits initiated by a purported purchase or sale, was offset by a pretended sale or pretended purchase executed in the same manner as the initiating purported purchase or sale. Every pretended purchase or sale was closed out by a purported offsetting transaction before the delivery time arrived and was purported to have been executed by plaintiff on the orders [fol. 188] and at the instruction of defendants, save and except as to some of the last transactions, which were closed out by plaintiff without instruction from such defendant at a time when defendant had no cash margin to protect his transactions.

7. At all the times in question plaintiff was a member in good standing of the grain exchanges on which the pretended contracts of purchase and sale were executed, and plaintiff constantly maintained a margin with the Clearing

House of each Grain Exchange as security for the performance of its bona fide contracts. All transactions of pretended purchase and pretended sale executed by plaintiff for denfendants were purported to have been contracted for on the Exchanges in the name of plaintiff.

8. None of the pretended purchases or sales were purported to have been executed at Carrollton, Missouri. Orders were pretended to have been given by defendants from time to time at Carrollton to plaintiff's local office for purported execution on the Grain Exchanges at Chicago, Minneapolis and Winnipeg; but none of these orders were purported to have been accepted by plaintiff at Carrollton. All of them were telegraphed to Kansas City for acceptance or rejection, and if accepted, were purported to have been carried out by plaintiff by telegraphic instructions emanating from Kansas City and by pretended written confirmation of the execution of the order, which pretended written confirmations would be mailed from Kansas City to the customer.

9. That no records of the accounts of plaintiff with the defendants were kept at Carrolton; that no moneys were paid out to customers in Carrollton, but remittances were mailed direct by check from Kansas City. All statements, all pretended "P & S's," all pretended confirmations of the purported execution of purchases and sales, were mailed to defendants from Kansas City. The Carrollton office merely pretended to receive and transmit purported orders of its customers to Kansas City for pretended execution on the Grain Exchange designated in the customer's pretended order.

10. All of the transactions of purchase and sale executed by plaintiff for defendants were ficticious transactions. None of them were actually executed between clearing members of the Exchange where pretended to have been consummated.

11. In all of the transactions plaintiff bet with its customers and took the other side of the deal.

12. In each transaction, after a pretended order to sell or purchase was purported to have executed by plaintiff in be-

[fol. 189] half of defendant, written confirmation thereof was immediately mailed by plaintiff to defendant. Every written confirmation recited that—

"All transactions made by us for your account contemplate the actual receipt and delivery of the property and payment therefor."

To which action of the Court in making each of the findings of fact so found, plaintiff (and also defendants) as to each separate finding and in each separate case, excepted at the time and still except.

---

Approval of Bill of Exceptions by Counsel

We have examined the foregoing bill of exceptions and find it correct, and it may be allowed and signed by the Court at any time.

Lathrop, Crane, Reynolds, Sawyer and Mersereau,
S. J. & G. C. Jones, Attorneys for Defendants.
Ryland, Stinson, Mag & Thomson, Attorneys for Plaintiff.

---

In United States District Court

Approval of Bill of Exceptions by District Judge

The above and foregoing bill of exceptions contains all of the evidence introduced at the trial of said cause, all of the rulings of the court, all of the exceptions allowed, all of the instructions refused, and each and every matter therein contained is true and correct, and the same is hereby signed, sealed, certified to and allowed as a full, true and complete bill of exceptions in and for said cause; and it is ordered to be filed as a record therein, and it is hereby made a part of the records in said cause.

This 6th day of November, 1930.

Albert L. Reeves, United States District Judge Who Presided at the Trial of said Cause.

[File endorsement omitted.]

[fol. 190] IN UNITED STATES DISTRICT COURT

PRÆCIPE FOR TRANSCRIPT—Filed Dec. 29, 1930

To the Clerk of the District Court of the United States for the Western Division of the Western District of Missouri:

Please prepare a transcript of record in the above entitled causes, and on or before the 5th day of February, 1931, transmit the same to the Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, pursuant to an appeal allowed in the above entitled causes, and to include in such transcript of record the following documents and papers, to-wit:

1. Plaintiff's petition in Cause No. 6044.
2. Defendant's Answer and Demurrer in Cause No. 6044.
3. Stipulation for Continuance in Cause No. 6044, filed November 25, 1925.
4. Stipulation for Continuance in Cause No. 6044, filed April 29, 1926.
5. Defendant's First Amended Answer to Cause No. 6044.
6. Reply of plaintiff to Defendant's First Amended Answer in Cause No. 6044.
7. Stipulation waiving trial by jury and consenting that Causes Nos. 6044, 6045, 6062, 6200, and 6201, be consolidated, filed March 27, 1928.
8. Order for Consolidation of Causes, filed March 27, 1928.
9. Plaintiff's Requested Findings of Fact.
10. Defendant's Requested Findings of Fact.
11. Order and Judgment including findings of fact and declarations of law made by the Court.
12. Memorandum Opinion of the Court.
13. Motion for new trial.
14. Order overruling motion for new trial.
15. Applications for appeal and order allowing appeal.
16. Assignments of Errors.
17. Order fixing amount of appeal bond.
18. Bond on Appeal.
19. Citation on Appeal with acknowledgment of service.

[fol. 191] 20. Order enlarging time to file Bill of Exceptions, filed April 25, 1930.

21. Order enlarging time to file Bill of Exceptions, filed November 1, 1930.

22. Bill of Exceptions.

23. All orders extending time to file transcript of record.

24. Praecipe for Transcript, filed the 29th day of December, 1930.

25. Election as to printing.

26. All record entries.

It is stipulated and agreed by and between the parties to the above consolidated causes that the pleadings set out in full in Cause No. 6044 are typical of the pleadings in Causes No. 6045, 6062, 6200, 6201, and that said parties stipulate and agree that the determination of all of said latter causes shall be governed by and shall be the same as the determination of said Cause No. 6044, and that for any and all purposes in connection with this appeal and the record on this appeal, all of the pleadings relative to said Causes Nos. 6045, 6062, 6200, and 6201, shall be considered a part of this record as though set out fully in this record. Parties hereto further stipulate and agree that the records, documents, papers, and proceedings therein set forth are sufficient for a complete record in this cause on appeal, and we hereby adopt the foregoing as a list designated by each of the parties to this cause to complete said transcript, and we hereby waive the issuance and service of notice upon any party hereto, and agree that said Praecipe shall be obeyed by and acted upon by the Clerk as fully and to all intents and purposes in the same manner as if said Praecipe had been regularly filed and a true copy thereof served upon each party hereto.

Ryland, Stinson, Mag & Thomson, Attorneys for Plaintiff. Lathrop, Crane, Reynolds, Sawyer & Mersereau, S. J. Jones, Attorneys for Defendants.

[File endorsement omitted.]

---

[fol. 192] In United States District Court

Order—Filed Jan. 6, 1931, further extending time to file transcript

For good cause shown, it is hereby ordered that the time for filing the transcript of the record upon appeal in the

above entitled causes in the United States Circuit Court of Appeals for the Eighth Circuit be extended to on or before the 7th day of February, 1931.

Dated this 6th day of January, 1931, at Kansas City, Missouri.

Albert L. Reeves, Judge.

[File endorsement omitted.]

---

IN UNITED STATES DISTRICT COURT

MEMORANDUM OPINION OF THE COURT—Filed Jan. 28, 1929

The above cases were consolidated and tried to the court without the intervention of a jury.

Plaintiff has sued each of the defendants on certain accounts and obligations arising from transactions in grain futures. This involved the purchase and sale of grain for future delivery. Plaintiff claims that it was engaged in the brokerage business and that at all times it acted as the agent and representative of the defendants.

The defendants each admit the transactions and the accuracy of the accounts and other ostensible obligations, but they seek to relieve themselves of liability by asserting that all of said transactions were wagering contracts and that by reason thereof plaintiff is not entitled to recover.

The evidence tended to show that the plaintiff was a grain dealer in Chicago, and that among other things it was engaged in the grain brokerage business; that it was a member of the Boards of Trade or "contract markets" of Kansas City, Chicago, Minneapolis and Winnipeg; that in the year 1924 it established a branch office or place of business at Carrollton, Missouri, and that it had a private telegraph wire connecting the office at Carrollton with its office in Kansas City.

The defendants are citizens and residents of Carrollton and vicinity and were at the date of said transactions engaged in various and sundry occupations. Such occupations were in no way connected with producing, purchasing, selling or delivering grain.

[fol. 193] Plaintiff's branch office at Carrollton was established and equipped after the fashion of offices usually char-

acterized as bucket shops. It used a blackboard and thereon quoted grain prices prevailing in the "contract markets" of which the plaintiff was a member. The agent in charge of said branch office solicited business of the defendants. Its method of operation was to receive verbal orders for the purchase or sale of grain for future delivery on one of the markets of which it was a member. Such purchase or sale in every case involved future delivery. When a verbal order was given, plaintiff's branch manager transmitted such order to its office in Kansas City over the private wire. At that office the order was confirmed or rejected. The plaintiff, as agent for the defendant, then undertook to make the purchase or consummate the sale at one of the contract markets. Plaintiff's compensation was derived from commissions on the transactions. Upon the confirmation of an order, the defendant in each instance was furnished with a written instrument wherein there was a recital that "all transactions made by us for your account contemplate the actual receipt and delivery of the property and payment therefor."

Defendants testified, contrary to the above, that receipt or delivery was never contemplated but that it was understood and agreed between each of the defendants and branch manager, in each transaction, that receipt and delivery would not be required. Moreover, the evidence tended to show that each of the defendants was engaged at the time in such business as to negative or disprove his capacity either to receive the property contracted for or make delivery thereof. Preparation was not made in any case for either one of the alternatives. Other pertinent facts will be stated and discussed in this memorandum opinion.

1. Plaintiff invokes the aid of provisions of the Grain Futures Act. This is a Congressional enactment approved September 21, 1922. By this law Congress undertook to provide for the regulation of all dealings in "futures." The Congress defined it as "transactions in grain involving the sale thereof for future delivery as commonly conducted on boards of trade and known as 'futures.'" It was declared that such transactions were affected with a national public interest and that they became "susceptible to speculation, manipulation, and control, and sudden or unreason-

able fluctuations in the prices thereof * * * and that such fluctuations in prices are an obstruction to and a burden upon interstate commerce in grain and the products [fol. 194] and by-products thereof and render regulation imperative for the protection of such commerce and the national public interest therein." (Title 7 Section 5 United States Code Annotated.)

By Section 6 Title 7 United States Code Annotated the Congress forbade such dealing except under certain specified circumstances and conditions, namely,

"Where such contract is made by or through a member of a board of trade which has been designated by the Secretary of Agriculture as a "contract market," * * * by a record in writing which shows the date, the parties to such contract and their addresses, the property covered and its price, and the terms of delivery."

By Section 7 of said Title 7 United States Code Annotated, the Congress fixed the qualifications of a "contract market." Among other qualifications required as a condition precedent to the establishment of such market or designation of such market was the following:

"When such governing board provides, in accordance with such rules and regulations, for the keeping of a record by the board or the members of the board of trade, as the Secretary of Agriculture may direct, showing the details and terms of all cash and future transactions entered into by them, consummated at, on, or in a board of trade, such record to be in permanent form, showing the parties to all such transactions, including the persons for whom made, any assignments or transfers thereof, with the parties thereto, and the manner in which said transactions are fulfilled, discharged, or terminated."

All the provisions of the Grain Futures Act were designed to be regulatory. For the purposes of such regulation each "contract market," designated by the Agricultural Department of the Government, was required to keep full and complete records of each and all transactions whether cash purchases or sales, or contracts for the purchase and sale on future delivery. The obvious design of

this regulatory act was to suppress and prevent manipulation, wagering and gambling.

Whether plaintiff kept the records contemplated by said law is unimportant in the consideration of this case. The fact that such records were required to be kept signified the purpose of the Congress to insure good faith in all such transactions and at least sincere initial purposes to carry out the contracts thus entered into. The Congressional Act [fol. 195] contemplated good faith and sincerity of purpose in all such dealings. It did not validate or approve fraudulent contracts or those entered into in bad faith. The mere fact that there was an outward and ostensible compliance with the provisions of the law did not foreclose an inquiry as to the good faith of the transaction. The Congress merely required a demonstration of good faith. By making such demonstration the parties did not become immune from liability on account of bad faith in actual practice. It may be assumed, therefore, that the plaintiff as a member of the "contract market" at the points designated met all the requirements prescribed by law and the Secretary of Agriculture, yet this would have nothing to do with the invalidity of the transactions with the defendants, if there were the absence of good faith.

2. The Grain Futures Act neither legalized nor provided for the regulation of wagering or gambling contracts in grain futures. Penalties were annexed only for the failure to observe the requirements of the law, or in case of false report in respect of crops or markets. The question of penalties for gambling or wagering was properly left to the states. The Grain Futures Act does not in any way affect the Missouri Statutes covering the subject of bucket-shops, option dealing etc. These statutes forbid pretended dealings and one of them declares that—

"All purchases and sales or pretended purchases and sales, or contracts and agreements for the purchase and sale of the shares of stocks, or bonds of any corporation, or petroleum, provisions, cotton, grain or agricultural products whatever, either on margin or otherwise, without any intention of receiving and paying for the property so bought, or of delivering the property so sold, and all the buying or selling or pretended buying or selling of such property on margins or on optional delivery, when the party

selling the same, or offering to sell the same, does not intend to have the full amount of the property on hand or under his control to deliver upon such sale, or when the party buying any of such property or offering to buy the same does not intend actually to receive the full amount of the same if purchased, are hereby declared to be gambling and unlawful, and the same are hereby prohibited."

It will be observed from the foregoing and from the provisions of the Grain Futures Act, that both the national and state governments have sought to accomplish the same purpose. The one has attempted to suppress wagering in [fol. 196] futures because of its evil influence upon trade, the other has forbidden it under penalty because of its evil influence upon morals. These statutes are not in conflict, but are complementary.

3. The final inquiry is to determine whether the transactions which caused the obligations sued on were within the inhibitions or interdictions of the law. The evidence of the defendants is that receipt or delivery of grain was never contemplated. Moreover, it is claimed by them that they so advised plaintiff's branch office manager and that he agreed that receipt or delivery would not be required. He said he would get them "out of it." It was acknowledged that the written memorandum of the transactions contained a recital to the effect that receipt and delivery were contemplated. All the facts and circumstances, however, negative and disprove any such assertion. The defendants were not engaged in a kindred business nor were they so situated as to have received or delivered the grain mentioned in the contracts. The evidence shows that the defendants were wholly unfamiliar with such transactions and that they knew nothing of "spreads," "offsetting," or "ringing" deals, or other terminology of the markets. It was conclusive that they were dealing merely in margins. The defendants and the plaintiff so understood. Their wagering contracts, however, were cloaked with the forms of law.

The decision in the case of State vs. Christopher, S. W. (2d) 621 is directly in point. The facts in that case were practically identical with the facts in the instant case. It was there adjudged that transactions, as here carried on, were within the condemnation of the criminal statutes of Missouri.

Plaintiff calls attention to the case of Gettys vs. Newburger, 272 Fed. 209, sustaining the integrity of the transactions under inquiry. The late Judge Sanborn in that case epitomized the aggregate holdings of our court in respect of similar transactions in the following language:

"A careful reading, comparison, and study of the pertinent opinions of the Supreme Court leads to the conclusions that: It is only when under the guise of a legal contract for the purchase or sale of goods to be delivered at a future time such as those here in evidence, parties to it really intend when the contract is made, that its obligations shall be discharged by the payment by one party to the other of the difference between the contract price and the market price [fol. 197] of the goods at the date fixed in the contract for performing it that the transaction becomes a wager and unlawful, and that it is only when a broker employed to make the contract participates in or is aware of such an intention of both parties thereto that his account for advances or commissions becomes unenforceable."

The above pronouncements are supported by a great array of authorities. In fact there is not a contrary line of cases. The evidence in the instant case shows that the plaintiff falls under the ban of the principle there announced. Even though plaintiff may have carefully clothed each of said transactions with the appearance of legality, yet as said in State vs. Christopher, supra, "contracts are construed as they are understood and acted upon by the parties." The court is of the opinion that the transactions in question were wagering and gambling. This is the only conclusion deducible from the evidence. In view of this deduction, the court must find the issues for the defendants in each case and deny recovery to plaintiff in each case.

Kansas City, Missouri, January 28th, 1929.

Albert L. Reeves, United States District Judge.

[File endorsement omitted.]

---

Clerk's certificate to foregoing transcript omitted in printing.

[fol. 198] Appearances of counsel omitted in printing.

---

[fol. 199] Minute entry of argument and submission, December 1, 1931, omitted.

---

[fol. 200] IN UNITED STATES CIRCUIT COURT OF APPEALS, EIGHTH CIRCUIT, NOVEMBER TERM, A. D. 1931

No. 9119

UHLMANN GRAIN COMPANY, Appellant,

vs.

A. P. DICKSON et al, Appellees

Appeal from the District Court of the United States for the Western District of Missouri

Mr. Alfred M. Seddon (Mr. I. P. Ryland, Mr. Arthur Mag, Mr. Roy B. Thomson, Mr. Paul R. Stinson, and Messrs. Ryland, Stinson, Mag & Thomson were with him on the brief) for appellant.

Mr. S. J. Jones (Mr. R. S. Righter, Mr. G. C. Jones, and Messrs. Lathrop, Crane, Reynolds, Sawyer & Mersereau were with him on the brief) for appellees.

Before Kenyon, Van Valkenburgh and Gardner, Circuit Judges

OPINION—Filed Feb. 18, 1932

GARDNER, Circuit Judge, delivered the opinion of the court.

Appellant, a grain broker and an Illinois corporation, brought these five actions at law against appellees to recover moneys advanced by appellant to the appellees and earned broker's commission on the purchase and sale of grain for future delivery. By stipulation of the parties, the five actions were consolidated and tried as one, trial by jury being waived. The trial of the consolidated cases

resulted in a judgment against appellant and in favor of the appellees.

[fol. 201] The parties will be referred to as they appeared in the lower court.

The petition of plaintiff in each of the cases was in conventional form, alleging that at all times therein mentioned plaintiff was engaged in the grain business, acting as a grain broker. That on the various dates referred to, the defendants employed plaintiff to purchase and sell wheat and other grains for them on certain named markets, the defendants agreeing to pay plaintiff a commission on all such purchases and sales; that pursuant to such employment plaintiff purchased and sold grain for defendants, plaintiff sometimes advancing all or part of the purchase price of such grain, for which services and advancements defendants agreed to pay plaintiff, and that during said time an account arose between plaintiff and the defendants of mutual credits and debits in the purchase and sale of grain, the account being attached and made a part of the petition in each case.

The defendants filed answer in each case, denying generally that they were indebted to plaintiff on account of the allegations in the petition, or any item thereof, and affirmatively alleging that each and all of the transactions involved were fictitious. That the buying and selling of the grain, as alleged by plaintiff, was a mere form and pretense; that the various transactions in question were gambling transactions between plaintiff and defendants, were illegal and in violation of the laws of the State of Missouri. That the defendants at the time of the transactions did not intend to accept delivery when they purchased grain, or make delivery when they sold it, and that their gains and losses were to be ascertained by the fluctuations in the market prices of the grain; that is to say, by taking the difference between the price at which it was pretended to be purchased, and the price at which it was sold, such difference to determine the amount of their gain, or the amount of their loss.

The reply of plaintiff put in issue the affirmative allegations of the answer.

The evidence discloses that plaintiff was engaged in the grain, grain elevator, and grain brokerage business, and was a member in good standing of the Grain Exchanges or

Boards of Trade of Kansas City, Missouri, Chicago, Illinois, Minneapolis, Minnesota, and Winnipeg, Canada. Its business consisted in buying and selling cash grain for [fol. 202] itself and for its customers, the operation of grain elevators, and acting as agent or broker for its customers in the purchase and sale of grain for future delivery. In the year 1924, when all the transactions here in question were had, plaintiff maintained a principal office at Chicago, Illinois, and a branch office at Kansas City, Missouri. It also maintained a local office at Carrollton, Missouri, which was in charge of one E. S. McDonough.

The transactions here involved were initiated in the local office of plaintiff at Carrollton, by the giving of an order by one of the defendants to plaintiff's agent or employee, for the purchase or sale of grain for future delivery, to be executed on the Boards of Trade or Grain Exchanges at Kansas City, Chicago, Minneapolis, or Winnipeg. Plaintiff maintained a private leased telegraph wire from its Carrollton office to its Kansas City office. Verbal orders of purchase or sale were given by defendants to plaintiff's agent at Carrollton which were by him transmitted by telegraph to plaintiff's Kansas City office for acceptance or rejection. Plaintiff's agent at Carrollton had no authority to accept or reject any order for the purchase or sale of grain for future delivery, but transmitted such order to plaintiff's Kansas City office for acceptance or rejection. If the order was accepted by plaintiff, its Kansas City office immediately telegraphed an order for execution to its Chicago office, except where the order was for the purchase or sale of Kansas City wheat. If the order was for the purchase or sale of Chicago wheat, it was executed on the trading floor of the Chicago Board of Trade; if for the purchase or sale of Minneapolis or Winnipeg wheat, it was executed on the trading floor of that respective Board of Trade or Grain Exchange. Immediately upon the execution of such an order, plaintiff made out and mailed from its Kansas City office to the customer, a written confirmation of the order and of its execution. Such written confirmation recited the date of the contract, the quantity and kind of grain bought or sold, the contract price (per bushel) of the commodity, the delivery month, and the place where the contract of purchase or sale was executed, as required by the

Federal Grain Futures Act. Such written confirmation recited that—

"All transactions made by us for your account contemplate the actual receipt and delivery of the property and payment therefor. We reserve the right to close these [fol. 203] transactions when deposits are running out, without giving further notice. We also reserve the privilege of clearing all transactions through Clearing Associations, if there be any, from day to day in accordance with the usage, rules or regulations of the Exchange where the trade is made, prevailing at the time. All purchases and sales made by us for you are made in accordance with and subject to the rules, regulations and customs of the Chamber of Commerce or Board of Trade where the trades are made, and the rules, regulations and requirements of its Board of Directors, and all amendments that may be made thereto. This contract is made under authority of the Act of Congress known as 'The Future Trading Act.' "

Each contract of purchase or sale of grain for future delivery, here involved, was made and executed on the respective Boards of Trade or Exchange in the name of the plaintiff as a clearing member of such Board of Trade or Exchange, and was made with a grain broker who was also a clearing member of such Board of Trade or Exchange, in the name of said broker acting either for himself or for an undisclosed principal; in fact, the rules of the respective Exchanges, and also Section 4 (b) of the Federal Grain Futures Act require that all contracts for the purchase and sale of grain for future delivery shall be made by or through a clearing member of the Board of Trade or Exchange which has been designated as a "contract market." Clearing members are the parties to these transactions on the Exchange, and they look for settlements to one another. Plaintiff was a member in good standing of the Federal Department. The Chicago Board of Trade, the Minneapolis Board of Trade, and the Kansas City Board of Trade, were all officially designated as "contract markets" by the Secretary of Agriculture, in accordance with the provisions of the Federal Grain Futures Act. Every contract of purchase or sale executed by plaintiff for defendants obligated it to full performance by sale or

purchase, and such performance was protected by the margin or deposit maintained by it with the Clearing House, or Exchange, or Board on which the transaction was made.

On most of the transactions here involved, defendants put up a margin or deposit with plaintiff. Plaintiff's only remuneration or compensation was for acting as broker for defendants in these transactions. Every sale or purchase made by plaintiff for defendants had an offsetting [fol. 204] purchase or sale, so that the net result was that no grain was delivered in any of these transactions. The testimony of the defendants was that they did not intend to make delivery in any case of the grain sold, or to accept delivery of any grain purchased, but that each sale or purchase was intended to be fulfilled by an offsetting sale or purchase of grain before the expiration of the time required for delivery.

The lower court found that all the purchases or sales were offset by sales or purchases executed in the same manner as the initiating purported purchase or sale and that, "Every pretended purchase or sale was closed out by a purported offsetting transaction before the delivery time arrived and was purported to have been executed by plaintiff on the orders and at the instruction of defendants, save and except as to some of the last transactions, which were closed out by plaintiff without instruction from such defendant at a time when defendant had no cash margin to protect his transactions." The court concluded that the transactions were gambling transactions and void under Revised Statutes of Missouri, 1929, Sections 4316 to 4326 inclusive.

On this appeal it is contended: (1) That there was no substantial evidence to support the finding of the court that the transactions were fictitious or gambling transactions; (2) that the Federal Grain Futures Act superseded all state laws relating to the subject of dealings in futures on contract markets, and that the contracts in question were valid under the Federal Grain Futures Act; (3) that independently and apart from the Federal statutes, plaintiff was entitled to recover; and (4) that if the transactions as made were unlawful, it was because of the acts of plaintiff's agent at Carrollton, which were outside the scope of his authority.

There is little room for originality of thought or expression so far as the law covering this subject is concerned, because it has been well settled by controlling decisions of the Supreme Court of the United States and of this court. There was no evidence that plaintiff bet with its customers, as found by the lower court. If the defendants lost on transactions, the plaintiff did not thereby win, and if they won by the transactions, the plaintiff did not thereby lose. There was no element of wager or bet in the transactions [fol. 205] between plaintiff and defendants. The court in its tenth finding, found that none of the contracts were actually executed between clearing members of the Exchange, but the undisputed evidence shows that in every instance the plaintiff went into a contract market and bound itself to purchase or sell. These transactions were sufficiently real so that the defendants in some instances realized and accepted a profit therefrom. On some of them there was a loss, which to date plaintiff, in part at least, has suffered. The transactions were real enough so that in most instances defendants deposited with plaintiff, and plaintiff in turn deposited with the Board of Trade or Exchange concerned, a margin to secure the performance of the contracts it made. So far as plaintiff is concerned, it was bound by the contracts of purchase and sale which it entered into as the broker for the defendants, to receive or deliver the grain contracted for, and it was liable in damages for the failure so to do.

Speculation is not necessarily gambling, and, absent some constitutional or statutory provision to the contrary, a contract for the sale or purchase of a commodity to be delivered at a future day is very generally held to be valid, even though the seller has not the commodity and has no means of getting it, other than to go into the market and buy it before the day of delivery. The contracts here under consideration were presumed to be lawful, and the defendants having pleaded that they were gambling contracts, the burden of proof was upon them to prove facts which voided them. Clews v. Jamieson, 182 U. S. 461; Cleage v. Laidley, 149 Fed. 346; Browne v. Thorn, 272 Fed. 950; Hoyt v. Wickham, 25 Fed. (2d) 777.

Contracts for future delivery made with the intention of settling them by offset or by ringing off or ringing out and by the payment of differences, in accordance with the

rules and practice of Boards of Trade, are not wagering contracts. It is not necessarily gambling that the buyer in a contract of sale providing for future delivery resells before the maturity of his contract; in fact, the contract is not tainted with the element of gambling by reason of the fact that at the time of the making of the contract a purchaser intends to resell before the time appointed for delivery. Chicago Board of Trade v. Christie Grain etc. Co., 198 U. S. 236; Clews v. Jamieson, 182 U. S. 461; Browne v. Thorn, 260 U. S. 137; Board of Trade of Chicago v. Olsen, 262 U. S. 1; Gettys v. Newburger, 272 Fed. 209; Browne [fol. 206] v. Thorn, 272 Fed. 950; Mullinix v. Hubbard, 6 Fed. (2d) 109; Wilhite v. Houston, 200 Fed. 390; Hoyt v. Wickham, 25 Fed. (2d) 777; Solomon v. Newburger, 35 Fed. (2d) 328; Lyons Milling Co. v. Goffe & Carkener, 46 Fed. (2d) 241; Grain Futures Act, 7 U. S. C. A., Secs. 1 to 17.

The Grain Futures Act, approved September 21, 1922, was enacted for the stated purpose of preventing and removing obstructions and burdens from interstate commerce in grain by regulating transactions in grain future exchanges. It limited the right to deal in futures and placed the practice under certain restrictions and regulations. Section 4 of that Act (Sec. 6, Title 7, U. S. C. A.) makes it unlawful for any person to transmit through the mail or otherwise in interstate commerce, any offer to make or execute, or any confirmation of the execution of, or any quotations, or report of the price of any contract of sale of grain for future delivery on or subject to the rules of any Board of Trade in the United States, or for any person to make or execute such contract of sale—

"which is or may be used for (a) hedging any transaction in interstate commerce in grain or the products or by-products thereof, or (b) determining the price basis of any such transaction in interstate commerce, or (c) delivering grain sold, shipped, or received in interstate commerce for the fulfillment thereof, except—

(a) Where the seller is at the time of the making of such contract the owner of the actual physical property covered thereby, or is the grower thereof, or in case either party

to the contract is the owner or renter of land on which the same is to be grown, or is an association of such owners, or growers of grain, or of such owners or renters of land; or

(b) *Where such contract is made by or through a member of a board of trade which has been designated by the Secretary of Agriculture as a 'contract market,' as hereinafter provided in this chapter, and if such contract is evidenced by a record in writing which shows the date, the parties to such contract and their addresses, the property covered and its price, and the terms of delivery.*" (Italics ours.)

While the Act placed a ban upon much of the practice of dealing in futures that had theretofore existed, it is to be observed that the transactions here involved seem clearly [fol. 207] to come within exception b, and the evidence shows that the requirements of that section were all complied with. It was manifestly the intention of Congress to legitimatize and make lawful transactions, dealings, and contracts in grain futures in which the provisions of this Act were complied with. Having made it unlawful for any person to engage in such transactions unless within the exceptions specified, it seems necessarily to follow that where the transaction comes within the exceptions specified, and has met and complied with all the requirements provided in the statute, such transactions are valid.

Dealings in grain futures had been sustained by the courts before this Act of Congress was passed. The Act does not in terms at least provide that the validity of transactions in grain futures shall depend upon whether the purchaser or seller intends to take or to make actual delivery of the grain. Congress left the law in this regard as it stood at the time of the adoption of the Act. In Board of Trade of Chicago v. Christie Grain etc. Co., supra, in an opinion by Mr. Justice Holmes, it is said:

"We must suppose that then as now, a settlement would be made by the payment of differences, after the analogy of a clearing house. This naturally would take place no less that the contracts were made in good faith, for actual delivery, since the result of actual delivery would be to leave the parties just where they were before. Set-off

has all the effects of delivery. The ring settlement is simply a more complex case of the same kind. * * *

"The fact that contracts are satisfied in this way by set-off and the payment of differences detracts in no degree from the good faith of the parties, and if the parties know when they make such contracts that they are very likely to have a chance to satisfy them in that way, and intend to make use of it, that fact is perfectly consistent with a serious business purpose, and an intent that the contract shall mean what it says. * * *

"In the view which we take, the proportion of the dealings in the pit which are settled in this way throws no light on the question of the proportion of serious dealings for legitimate business purposes to those which fairly can be classed as wagers, or pretended contracts. No more does the fact that the contracts thus disposed of call for many [fol. 208] times the total receipts of grain in Chicago. The fact that they can be and are set off sufficiently explains the possibility which is no more wonderful than the enormous disproportion between the currency of the country and contracts for the payment of money, many of which in like manner are set off in clearing houses without any one dreaming that they are not paid, and for the rest of which the same money suffices in succession, the less being needed the more rapid the circulation is."

This court in Gettys v. Newburger, supra, in an opinion by the late Judge Sanborn, after defining gambling transactions, said:

"On the other hand, there are lawful customary and generally prevailing methods of closing out such contracts, settling them and discharging the obligations of the parties thereunder which do not render such contracts wagering contracts or illegal, to-wit: (1) By sales; (2) by direct set-offs; and (3) by ringing off before the times of delivery specified in the contracts arrive, so that when those times come no liability to deliver or to pay will exist, and if the parties, when they make such a contract intend not to deliver or to pay for the commodity at the time fixed in the contract therefor because they intend to close out the contract and to settle their obligations thereunder by the use of these lawful methods before the time fixed for the delivery arrives, that intention not to pay or deliver is con-

sistent with the laws and the public policy regarding wagers and it does not make or tend to prove such a contract a wagering contract, illegal or void."

In the instant case, the defendant Dickson, on direct examination, said:

"There was no intention on my part at any time to accept delivery of wheat that I bought or make delivery of wheat that I sold. I have never been in any other business but the clothing business. I was never interested in any elevator. I am not a grower of wheat. I could not have made any preparations to accept delivery. I would not have been financially able to have bought the wheat and paid for it."

On cross-examination, however, he testified as follows:

[fol. 209] "Q. Did he (Mr. McDonough, plaintiff's agent at Carrollton) tell you the deals would be handled by the Uhlmann Grain Company on those Boards of Trade?

A Yes, sir.

* * * * * * *

Q. So there were a lot of those transactions that were handled either because you told him what to do, or acquiesced in what he did for you?

A. I suppose so.

Q. Every one of those transactions he handled for you in the way you have described, was done either because you told him beforehand to close it out, or because he closed it out and later you told him it was all right?

A. Yes, sir.

* * * * * * *

Q. I am asking you if it isn't a fact that is what you did before the delivery month arrived, you sold out your purchase and you bought out your sales?

A. I suppose it was.

Q. And that is what you intended to do all along in all of these dealings that you had?

A. Sell out without delivery?

Q. Yes, sir; and buy out without a purchase before the time came around, and that is what you did whenever you exercised your own judgment, didn't you?

A. I suppose."

Another one of the defendants testified:

"Q. Now, whenever any of those contracts were entered into between you and as you say, Mr. McDonough, that you made a purchase, for instance, did you later make a sale against that purchase before delivery time came?
A. Yes, sir.
Q. Did that in every instance?
A. Always.
Q. Never did anything else?
A. No, sir.

* * * * * * *

Q. That is to say, before the time of delivery arrived you were going to get rid of your contract, that is the way you intended to do when you first started to deal with McDonough?
A. That is the instructions I gave to him.
Q. And he carried them out, didn't he?
A. Yes, sir."

This testimony, which is typical of that submitted on behalf of all the defendants, and so stipulated, shows that it was the intention and understanding of the defendants that [fol. 210] all of these transactions were to be consummated by plaintiff as their broker upon the contract markets named, and that the transactions were actually consummated by the plaintiff in accordance with their purpose, intention and understanding.

The validity of these contracts seems to be conclusively established by Gettys v. Newburger, supra. This court has consistently so held in a long line of cases following Gettys v. Newburger. In Mullinix v. Hubbard, supra, where the validity of a similar contract was upheld, this court, speaking through Judge Lewis, said:

"As already stated, there was no delivery on any of these contracts, but before delivery dates were due they were all closed out by the lawful, customary and generally prevailing methods permitted by the rules and regulations of the exchange and its clearing house, and Bryant's intention when he made his contracts that they should be closed out in that way did not render them wagering contracts."

In Lyons Milling Co. v. Goffe & Carkener, supra, in an opinion by Judge Phillips, it is said:

"The fact that contracts for future delivery are closed out before delivery is due, by set-off or ringing off in accordance with the rules and regulations of the Board of Trade and its clearing house, and the fact that a purchaser so intended to close out a contract before delivery was due, does not make the contract a wager and invalid."

The burden of proof was on the defendants to prove that the trades here involved were gambling transactions. This burden they have not sustained, and there was no substantial evidence to sustain the Court's finding which branded these contracts as gambling transactions.

It is urged, however, that the transactions were void under certain Missouri statutes. Section 4316 of the Revised 1929 Missouri Statutes makes the carrying on of a "bucket shop" a felony. Section 4317 attempts to define the term "bucket shop" and transactions within the ban of the statute. The test is whether in fact there was an actual purchase and sale, or sale and purchase, for or on account of the parties to the contract. We have here held that there was such a sale and purchase of grain for future delivery at a designated contract market in accordance with [fol. 211] the provisions of the Grain Futures Act and the rules prescribed by such markets. Neither the Missouri Statutes, nor the decision of the Supreme Court of Missouri in State v. Christopher, 2 S. W. (2d) 621, has any application to purchases of grain for future delivery made at duly designated markets. In that case the Supreme Court of Missouri said:

"We accordingly hold, until federal authority declares otherwise, that the effect of the Grain Futures Act was to restrict the operation of state laws, like our section 3574, so as to make them inapplicable to transactions coming within the terms of the Grain Futures Act, conducted on a 'contract market' according to the rules prescribed by that market."

There is both reason and authority for holding that Congress having entered the legislative field with respect to transactions in grain futures at designated contract mar-

kets has superseded and displaced all state laws and legislation regarding such dealings. Stafford v. Wallace, 258 U. S. 495; Swift & Co. v. United States, 196 U. S. 375; Board of Trade of Chicago v. Olsen, 262 U. S. 1; Chamber of Commerce of Minneapolis v. Federal Trade Commission, 13 Fed. (2d) 673; Hoyt v. Wickham, 25 Fed. (2d) 777; State ex rel Burnett v. Rosenbaum Grain Co. (Kans.), 222 Pac. 80; Goffe & Carkener v. Henneberger, 294 Pac. 672. However, it is not necessary to decide whether the Grain Futures Act supersedes the Missouri Statute, further than the Missouri Court has itself held.

The state statute could not affect transactions at a contract market. It appears in this case that plaintiff merely extended the facilities of its Kansas City office into Carrollton, by making available there much the same service and information to be had at the contract market. Any one of the defendants could have gone into either of these contract markets, through a broker, and made these purchases and sales. This in effect was done at Carrollton, using the agency employed by plaintiff at that place to effectuate the transactions.

These transactions involved interstate commerce, and if the Missouri Statute relied upon, created a burden on or interfered with interstate commerce, then it was immaterial whether that burden was substantial or incidental, because when Congress has acted with reference to a matter con- [fol. 212] fided to it by the Constitution, then its statutes displace and supersede all conflicting state legislation touching the matter. Gulf etc. R. Co. v. Hefley, 158 U. S. 98; Missouri etc. R. Co. v. Harris, 234 U. S. 412; Asbell v. Kansas, 209 U. S. 251; Lake Shore etc. R. Co. v. Ohio, 173 U. S. 285; Smith v. Turner, 7 Howard 396.

In the Grain Futures Act it is recited that—

"Transactions in grain involving the sale thereof for future delivery as commonly conducted on boards of trade and known as 'futures' are affected with a national public interest; that such transactions are carried on in large volume by the public generally and by persons engaged in the business of buying and selling grain and the products and by-products thereof in interstate commerce; that the prices involved in such transactions are generally quoted and disseminated throughout the United States and in foreign

countries as a basis for determining the prices to the producer and the consumer of grain and the products and by-products thereof and to facilitate the movements thereof in interstate commerce."

The Act was sustained by the United States Supreme Court in Board of Trade of Chicago v. Olsen, supra, as a regulation of interstate commerce.

When the lower court held that the plaintiff was engaged at Carrollton in purely intrastate commerce, it failed to give effect to the declarations of the Grain Futures Act, and failed to recognize that this local agency was a part of the national and international market and agency for the handling and sale of grain or grain futures. Stafford v. Wallace, supra.

As the case must be reversed for the errors already considered, it is not deemed necessary to discuss other contentions of appellant.

The judgment appealed from is reversed and the cause remanded for further proceedings not inconsistent herewith.

---

IN UNITED STATES CIRCUIT COURT OF APPEALS

CONCURRING OPINION—Filed Feb. 18, 1932

VAN VALKENBURGH, Circuit Judge, concurring:

[fol. 213] In view of the importance of the question at issue, affecting, as it does, a very necessary unit in our industrial life, I desire to add my reasons for concurrence in the able main opinion in this case.

The Uhlmann Grain Company is a member in good standing of the Boards of Trade of Kansas City, Missouri, Chicago, Illinois and Minneapolis, Minnesota, and through a representative operates upon the Board of Trade or Grain Exchange of Winnipeg, Canada. In Missouri, at the time under consideration, it had a branch office in Carrollton, in charge of one McDonough. Through this office the manager communicated for final confirmation and disposition of all grain trades with the parent house or houses. It is conceded, and is so stated by the court in its findings of fact, that all the requirements of the Grain Futures Act were met in the procedure adopted in the transaction here under

consideration. The finding of the court is merely that such transactions were fictitious and the regularity of the procedure merely a sham and cover for such. With this concession it is necessary only to apply the law applicable to such situations.

To begin with, then, where contracts for the purchase and sale of grain on exchanges are fair on their face and presumptively lawful, regardless of the undisclosed intention of the defendant purchaser, the burden is on such defendant to prove that the transactions were mere wagers on the fluctuations of the market. Wilhite v. Houston (C. C. A. 8), 200 Fed. 390; Clews v. Jamieson, 182 U. S. 461; Lyons Milling Co. v. Goffe & Carkener (C. C. A. 10), 46 Fed. (2d) 241.

In this case defendants rely upon their statement to the broker that they did not intend at any time to take any grain as purchasers nor to fulfill any orders as sellers. That this was communicated to the broker's representative, who assured defendants that they could be protected against such a situation by hedging or sales prior to the date of maturity. There is no contention that the other parties to the contract, to-wit, the dealers upon the foreign Boards of Trade, expressed any such intention or were cognizant of such expressed intention. That such was the understanding is explicitly denied by Mr. McDonough, and all the contracts and documents entered into were in approved form for legitimate dealing upon the Boards of Trade in question. Of these contracts, and their import, the defendants [fol. 214] are conclusively proved to have had knowledge. Their testimony concedes that they knew these orders were being placed for them by the broker upon the foreign Boards of Trade. These transactions were in the nature of spreads or hedging operations and consisted largely of sales upon the Winnipeg Board and corresponding purchases upon the Chicago Board of Trade or the converse. Thus in advance it was known that one trade was intended to off-set the other, and any such trade was subject to being closed out before the future date of maturity of the contract. Such an operation has been repeatedly and authoritatively held to be valid, and this is true independently of the Grain Futures Act, or whether it has entered and appropriated this field, where the operation is otherwise a legitimate and

legal one in the jurisdiction where it is consummated. Board of Trade v. Christie Grain & Stock Co., 198 U. S. 236; Clews v. Jamieson, 182 U. S. 461; Cleage v. Laidley (C. C. A. 8), 149 Fed. 346; Gettys v. Newburger, et al. (C. C. A. 8), 272 Fed. 209; Mullinix v. Hubbard (C. C. A. 8), 6 Fed. (2d) 109; Hoyt v. Wickham (C. C. A. 8), 25 Fed. (2d) 777; Lyons Milling Co. v. Goffe & Carkener (C. C. A. 10), 46 Fed. (2d) 241.

And where a defendant employs brokers to purchase and sell grain for him on commission at various exchanges, the brokers having no interest in the purchases and sales other than as defendant's brokers, their relation is not affected by the fact that in executing defendant's orders the brokers assume the position of principals toward those with whom they deal. Wilhite v. Houston (C. C. A. 8), 200 Fed. 390. There is nothing in this evidence to indicate that the dealings were between plaintiff and defendants as such principals. On the contrary, the entire testimony shows that the transactions were between defendants and principals upon the several Boards of Trade, whose identity could have been disclosed at any time upon application. There is no testimony which indicates that there was any irregular procedure upon those grain exchanges. Defendants, having lost in their grain speculations, seeks to charge the principals upon those exchanges with their asserted knowledge of the representative of appellant in charge of the Carrollton office. The record both from the standpoint of actuality or legal presumption totally fails to establish this contention.

[fol. 215] The trial court evidently based its conclusion upon the case of State v. Christopher, 318 Mo. 225. In the first place the Missouri law is out of the picture, because it is conceded that none of the sales involved took place or were consummated upon the Kansas City Board of Trade; but it is somewhat instructive to consider further the basis of the Christopher decision. Its holding necessarily was that trades initiated through the Sedalia branch of the Kansas City Board of Trade were not conducted upon a contract market, but that such operations were confined to the Sedalia house, which was, in and of itself, not a contract market. It assumed, therefore, that the dealings were between the customer and the Sedalia house, which was thus conceived to be a bucket-shop.

The trial court applied this same situation to the branch at Carrollton. This contention obviously cannot be sustained. So long as the ultimate consummation of the transactions were upon the contract market either at Kansas City, Chicago or Minneapolis, it matters not that they were initiated for convenience in the branch houses of such markets. It is essential that such out-lying houses should be disconnected in substance and in fact from parent grain exchanges to justify the conclusion of the Missouri Supreme Court and of the court below. With this proposition established, the conclusion of both such courts falls, but it is further to be observed that the Supreme Court of Missouri was not dealing with the statute of that state which forbids dealing in grain futures except with the intention to take or deliver the grain dealt in, but with section 3574 R. S. Mo. 1919, which makes it a misdemeanor for any person to keep a place wherein is permitted pretended buying and selling of stocks, grain and other products without any intention of receiving and paying for the property bought, or delivering the property sold; and the opinion concedes that the Grain Futures Act of Congress does regulate, forbid, or make lawful any contract for the future delivery of grain where made in a contract market, designated as such by the Secretary of Agriculture. In so holding the Supreme Court of Missouri is in harmony with the weight of authority and with the purpose and intendment of the Grain Futures Act. See, State, ex rel. v. Rosenbaum Grain Company, et al., 115 Kas. 40; Lyons Milling Company v. Goffe & Carkener, (C. C. A. 10) 46 Fed. (2d) 241. See, also, the decision of the [fol. 216] same district court, from which this appeal is taken, in Board of Trade of Kansas City v. Gentry, in which the trial judge in this case sat as one of the three judges. But the effect of the Grain Futures Act is sufficiently disclosed by the decisions of the Supreme Court in construing that act.

In Stafford v. Wallace, 258 U. S. 495, 528, it is pointed out that the various stock yards of the country are great national public utilities to promote the flow of commerce from the ranges and farms of the west to the consumers in the east. They conduct a business affected by a public use of a national character and subject to national regulation.

In Board of Trade of City of Chicago v. Olsen, 262 U. S. 1, 43, this same principle is held to apply to the grain busi-

ness upon Boards of Trade. It has been held, and is universally recognized, that such Boards of Trade or contract markets are essential to transactions in grain and kindred products, not only from the standpoint of those who sell upon such boards, but from that of the quotations upon which producers depend for their information. Such was the view of Congress in establishing these grain markets and entering this field of regulation, and such is the construction placed upon this legislation by the Supreme Court of the United States.

It must inevitably happen that there will be irregularities and abuses, but so long as transactions are conducted in accordance with the rules and regulations of such contract markets, disgruntled speculators cannot be heard to complain and to repudiate their legal obligations upon such ground. It is true that if a house is established to be a mere bucket-shop, apart from and disconnected with any contract market, then the provisions of law against gambling in futures, or otherwise, apply. That Congress has entered and appropriated this field, as I have said, is evident from the decision in the Olsen case in addition to the rulings already cited. This is the necessary import of the following language in that case:

"In the act we are considering, Congress has expressly declared that transactions and prices of grain in dealing in futures are susceptible to speculation, manipulation, and control which are detrimental to the producer and consumer and persons handling grain in interstate commerce, and render regulation imperative for the protection of such commerce and the national public interest therein. * * * [fol. 217] Sales of an article which affect the country-wide price of the article directly affect the country-wide commerce in it. By reason and authority, therefore, in determining the validity of this act, we are prevented from questioning the conclusion of Congress that manipulation of the market for futures on the Chicago Board of Trade may, and from time to time does, directly burden and obstruct commerce between the states in grain, and that it recurs and is a constantly possible danger. For this reason, Congress has the power to provide the appropriate means adopted in this act by which this abuse may be restrained and avoided. * * * The Board of Trade conducts a busi-

ness which is affected with a public interest and is, therefore, subject to reasonable regulation in the public interest."

The mere fact that no grain was actually delivered or received pursuant to purchases and sales, but that the sales and purchases were set off against others according to the custom of exchanges, does not show that the transactions were illegal. Wilhite v. Houston (C. C. A. 8), 200 Fed. 390. All the more is this true where the very nature of the transaction was in its inception a spread or set off dealing, which has been expressly held to be lawful. It is in evidence that some of these defendants would have been able to respond to their obligations under the contract entered into, but this is not essential. Contracts in every day affairs are entered into, and pecuniary liabilities thereby established irrespective of the financial ability of a party to respond thereto; nor can it be expected that brokers and parties upon contract markets must be put to investigation of a customer's financial rating before permitting transactions upon such markets.

The situation is conclusively disposed of by Mr. Justice Holmes in his opinion in Board of Trade of Chicago v. Christie Grain & Stock Company, 198 U. S. 250, as shown in Judge Gardner's opinion.

---

IN UNITED STATES CIRCUIT COURT OF APPEALS

DISSENTING OPINION—Filed Feb. 18, 1932

KENYON, Circuit Judge, dissenting:

It seems to me that the purported sales and purchases which appellant claims were carried on for the various ap- [fol. 218] pellees were nothing but fictitious operations and were gambling transactions. The fact that they may be termed "dealings in grain futures" sanctioned by the Federal Grain Futures Act does not remove the odor of bucket shop transactions surrounding them. Carrollton was a small town in Missouri at which plaintiff through an agent operated an office. This office was in the basement of the Florence Hotel. It consisted of a roll top desk, some chairs where the prospective victims might rest, a blackboard where they might study figures which they could not understand, a desk for telegraph instruments, a

typewriter, and some other paraphernalia that added a touch of mystery to the situation. There was a private telegraph wire communicating with the Kansas City office of appellant. Here sat throughout the day some of the citizens of Carrollton and vicinity who expected to grow rich rapidly by gambling in the purchase and sale of imaginary commodities. The testimony shows that the defendants dealt in over three million bushels of grain during the short time that plaintiff had its office at Carrollton. The evidence shows there were some forty odd other customers. If they had been equally as desirous of buying grain and selling the same as were the defendants there would have been more bushels of grain purchased and sold than possibly could have been produced in the county in which Carrollton was located and adjacent counties thereto, and if it had been delivered, these customers, consisting of an ice dealer, an employe in a printing office, some farmers, an insurance agent, a country merchant, a laundryman's wife, and an undertaker's employe, would have sought in vain for some place in which to store the products. Of course what they were doing was merely betting on the advance or fall in the price of grain with no intention of actually purchasing or selling any grain. I am so well satisfied that the trial Court was right in holding these transactions to be pure gambling transactions that I am unwilling to agree that they were legal. Therefore feel compelled to dissent from the majority opinion.

— —

[fol. 219] In United States Circuit Court of Appeals, Eighth Circuit

No. 9119

Uhlmann Grain Company, a Corporation, Appellant,

vs.

A. P. Dickson, Joe Dickson, I. N. Calvert, C. T. Dickinson, and Ernest Miller

Judgment—February 19, 1932

Appeal from the District Court of the United States for the Western District of Missouri

This cause came on to be heard on the transcript of the record from the District Court of the United States for

the Western District of Missouri, and was argued by counsel.

On Consideration Whereof, it is now here ordered and adjudged by this Court, that the judgment of the said District Court, in this cause, be, and the same is hereby, reversed with costs; and that the Uhlmann Grain Company, a Corporation, have and recover against A. P. Dickson, Joe Dickson, I. N. Calvert, C. T. Dickinson, and Ernest Miller the sum of — Dollars for its costs in this behalf expended and have execution therefor.

It is further ordered by this Court that this cause be, and the same is hereby, remanded to the said District Court with directions for further proceedings not inconsistent with the opinion of this Court.

---

[fol. 220] IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

APPELLEES' PETITION FOR REHEARING—Filed March 17, 1932

Now come appellees in the above entitled cause and pray the Court to set aside the opinion and decree of this Court filed and entered herein February 18th, 1932, and to grant appellees a rehearing of this cause for the following reasons to-wit:

I

The Court overlooked material matters in evidence which sustained and justified the trial court's findings of fact Nos. 10 and 11 (Record 18, 188) which findings of fact were as follows:

"10. All of the transactions of purchases and sales executed by plaintiff and defendant were fictitious transactions; none of them were actually executed by clearing members of the exchange where pretended to have been consummated."

"11. In all of the transactions plaintiff bet with its customers and took the other side of the deal."

[fol. 221] The Court in its opinion seems to accept as conclusive the testimony of plaintiffs that the transactions

were in fact real, were actually executed and binding, but overlooked in that connection material evidence delivered by plaintiff's officers and employees as well as on the part of defendants which fully justified the Court's finding in favor of the defendants, namely, testimony of plaintiff's vice president, Paul Uhlmann, to the effect that the whole matter (transactions in question) were in plaintiff's hands (Record 147); and letters addressed by plaintiff to Mr. R. A. Thompson and I. N. Calvert (Record 153) which justify the trial court's finding that these were fictitious and gambling transactions; and the testimony of plaintiff's witness, Mr. E. S. McDonough, that the Carrollton office was opened up for the mere purpose of soliciting customers to engage in transactions on the Board of Trade; and also overlooked evidence of the nature of the business in which these Carrollton customers were engaged, their avocations and financial condition to carry on such enormous transactions (Record 166, 167).

II

The Court in its opinion overlooked and failed to give effect to the testimony of witnesses, both for plaintiff and defendant, to the fact that these were purely marginal transactions; that no delivery was intended in any event, and that the transactions were to be closed and were closed by taking the differences at which the grain was purported to have been bought and the price at which it was purported to have been sold, which evidence goes to establish the fact that these were gambling transactions and which fully justified the findings of fact Nos. 10 and 11, as made by the trial court.

III

The Court in the majority opinion overlooked the well-established rule of law that where no delivery was intended by either party and the contract was to be closed by an ascertainment of the differences between the market price of the grain at the time of its purchase and at the time it was sold, in and of itself constitutes a gambling contract and is therefore void.

IV

The Court in its opinion overlooked the rule of law that where one party to a transaction or transactions knows of,

or is in possession of such facts as to bring home to him [fol. 222] knowledge that the other party is gambling or wagering on the rise and fall of the markets, and either directly or indirectly as principal or agent participates therein, then the contract is void; and any consideration moving from one party to the other is unlawful, illegal, and such contract can not be enforced or recovery had thereon.

V

The Court in the majority opinion gave the "Grain Futures Act" a broader scope than Congress intended. Congress did not intend by the adoption of the "Grain Futures Act" to invade the whole domain of legislation on the subject or by that act to repeal state laws denouncing grain gambling, marginal trading or the operation of bucket shops.

Respectfully submitted.

S. J. Jones, G. C. Jones, Richard S. Righter, Attorneys for Appellees. Lathrop, Crane, Reynolds, Sawyer & Mersereau, of Counsel.

We certify that the foregoing petition for rehearing is not interposed for delay, but that in our opinion it is well-founded in point of law.

S. J. Jones, G. C. Jones, Richard S. Righter, Attorneys for Appellees.

[File endorsement omitted.]

---

[fol. 223] In United States Circuit Court of Appeals

Order Denying Petition for Rehearing—March 21, 1932

This cause came on this day to be heard upon the petition for a rehearing, filed by Counsel for Appellees.

On consideration whereof, it is now here ordered by this Court, that said petition for a rehearing of this cause, be, and the same is hereby, denied.

IN UNITED STATES CIRCUIT COURT OF APPEALS

MOTION OF APPELLEES TO STAY MANDATE—Filed March 28, 1932

Comes now appellees in the above entitled cause and show to the Court that they are preparing to file in the Supreme Court of the United States a petition for a Writ of Certiorari herein, and pray the Court pending the filing of said petition to stay the mandate herein.

Richard S. Righter, S. J. Jones, G. C. Jones, Attorneys for Appellees.

[File endorsement omitted.]

---

[fol. 224] IN UNITED STATES CIRCUIT COURT OF APPEALS

ORDER STAYING ISSUANCE OF MANDATE—April 1, 1932

On Consideration of the motion of appellees for a stay of the mandate in this cause pending a petition to the Supreme Court of the United States for a writ of certiorari, It is now here ordered by this Court that the issuance of the mandate herein be, and the same is hereby, stayed for a period of thirty days from and after this date, and if within said period of thirty days there is filed with the Clerk of this Court a certificate of the Clerk of the Supreme Court of the United States that a petition for writ of certiorari, record and brief have been filed, the stay hereby granted shall continue until the final disposition of the case by the Supreme Court.

---

[fol. 225] Clerk's certificate to foregoing transcript omitted in printing.

---

[fol. 226] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 10, 1932

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Eighth Circuit is

granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

---

Endorsed on cover: File No. 36,744. U. S. Circuit Court of Appeals, Eighth Circuit. Term No. 63. A. P. Dickson, Joe Dickson, I. N. Calvert, et al., petitioners, vs. Uhlmann Grain Company. Petition for a writ of certiorari and exhibit thereto. Filed May 9, 1932. File No. 36,744.

FILE COPY

Office Supreme Court, U. S.
FILED
MAY 9 1932
CHARLES ELMORE CROPLEY
CLERK

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1932.

No. [redacted] 63

A. P. DICKSON, JOE DICKSON, I. N. CALVERT, C. T. DICKINSON AND ERNEST MILLER, PETITIONERS,

VS.

UHLMANN GRAIN COMPANY, A CORPORATION, RESPONDENT.

## PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT AND SUPPORTING BRIEF.

S. J. JONES,
G. C. JONES,
RICHARD S. RIGHTER,
*Counsel for Petitioners.*

LATHROP, CRANE, REYNOLDS, SAWYER & MERSEREAU,
*Of Counsel.*

## INDEX


Petition ..... 1-11

Summary Statement of the Matter Involved .. 2

The Facts ..... 4

Reasons Relied on for Allowance of the Writ 7

Brief in Support of Petition for Writ of Certiorari 12

Opinions Below ..... 12

Jurisdiction ..... 12

Statement ..... 12

Argument ..... 12

Conclusion ..... 21

Appendix ..... 23


### Table of Cases


Atwater vs. Brokerage Co., 147 Mo. App. 436, 126 S. W. 823 ..... 2, 17

Chicago Board of Trade vs. Christie, 198 U. S. 236, 49 L. Ed. 1031, l. c. 249 ..... 20

Chicago, B. & Q. Ry. Co. vs. Illinois, 200 U. S. 561, 50 L. Ed. 596 ..... 19

Clews vs. Jamieson, 182 U. S. 461, 45 L. Ed. 1183 .. 20

Conner vs. Black, 119 Mo. 126, 24 S. W. 184 ..... 2, 17

Elmore-Schultz Grain Co. vs. Stonebraker, 202 Mo. App. 81, 214 S. W. 216 ..... 2, 17

Embrey vs. Jemison, 131 U. S. 336, 33 L. Ed. 132 .. 20

Fenner vs. Boykin, 3 Fed. (2d) 674 ..... 8, 9, 13, 19

House vs. Mayes, 219 U. S. 270, 55 L. Ed. 213 ..... 19

Irwin vs. Williar, 110 U. S. 499, 508, 28 L. Ed. 225 .. 20

King & Co. vs. Horton, 116 Ohio State 205, 156 N. E. 124 ..... 8, 9, 13, 17

McVean vs. Wehmeier, 215 Mo. App. 587, 256 S. W. 1085 ..... 2, 17

Price vs. Barnes, 300 Mo. 216, 254 S. W. 33 ..... 2, 17

Smith vs. Bailey, 200 Mo. App. 627, 209 S. W. 945 ..... 2, 17

State ex rel. Burnett vs. Rosenbaum Gr. Co., 115 Kans. 40, 222 Pac. 80 ..... 18

State vs. Christopher, 318 Mo. 225, 2 S. W. (2d) 621 ..... 2, 7, 9, 13, 17

Stewart vs. Hutchinson, 120 Mo. App. 32, 96 S. W. 253 ..... 2, 17

Western Union Telegraph Co. vs. Hammond, 3 L. R. A. (N. S.) 153 (Ind. 76 N. E. 100) ..... 19

STATUTES

Grain Futures Act, (Sec. 1-17, Title 7, U. S. C. Ann.) ..... 2, 12

Judicial Code, Section 240 ..... 10

Judicial Code, Section 240a, (U. S. Code, Title 28, Sec. 344) ..... 12

Missouri Bucket Shop Law, (Sections 4316 to 4326, R. S. Mo. 1929) ..... 2, 3, 13

Ohio Bucket Shop Law, Syl. 6, Northeastern Reporter ..... 18

Revised Statutes of Mo. (1929) Sections 4316-4326, see appendix ..... 23-29

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1932.

No. .....

A. P. DICKSON, JOE DICKSON, I. N. CALVERT, C. T. DICKINSON AND ERNEST MILLER, PETITIONERS,

VS.

UHLMANN GRAIN COMPANY, A CORPORATION, RESPONDENT.

## PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT AND SUPPORTING BRIEF.

*To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States.*

MAY IT PLEASE THE COURT:

Your petitioners, A. P. Dickson, Joe Dickson, I. N. Calvert, C. T. Dickinson and Ernest Miller, respectfully pray for a writ of certiorari to the Circuit Court of Appeals for the Eighth Circuit, to review a judgment of that court entered February 18, 1932. The transcript of the record in the case has been filed herewith in accordance with rule 38 of this court.

## SUMMARY STATEMENT OF THE MATTER INVOLVED.

I.

The Circuit Court of Appeals for the Eighth Circuit has in this case decided an important question of local law in a way in conflict with applicable local decisions, in that the Circuit Court of Appeals, in effect, held that the Grain Futures Act (Sec. 1-17, Title 7, U. S. C. Ann.) nullifies the Missouri Bucket Shop Law (Sections 4316 to 4326, R. S. Mo. 1929) in every case where an order for the purported purchase or sale of grain is transmitted to a "contract market" to be executed, even though the parties intend that no grain shall be delivered, but only that the transaction shall be terminated by a corresponding sale or purchase, all contrary to the decisions of the Supreme Court of Missouri and the Missouri Courts of Appeals in *State* v. *Christopher,* 318 Mo. 225, 2 S. W. (2d) 621; *Price* v. *Barnes,* 300 Mo. 216, 254 S. W. 33; *Conner* v. *Black,* 119 Mo. 126, 24 S. W. 184; *Smith* v. *Bailey,* 200 Mo. App. 627, 209 S. W. 945; *Stewart* v. *Hutchinson,* 120 Mo. App. 32, 96 S. W. 253; *Atwater* v. *Brokerage Co.,* 147 Mo. App. 436, 126 S. W. 823; *McVean* v. *Wehmeier,* 215 Mo. App. 587, 256 S. W. 1085; *Elmore-Schultz Grain Co.* v. *Stonebraker,* 202 Mo. App. 81, 214 S. W. 216.

II.

The Circuit Court of Appeals for the Eighth Circuit has in this case decided an important question of

general law in a way probably untenable in that said Circuit Court of Appeals decided that the Missouri Bucket Shop Law (Sections 4316-4326, R. S. Mo. 1929) did not apply to the purported purchase and sale of grain made by these petitioners because the court found that Uhlmann Grain Company transmitted the orders for purchase and sale given it by petitioners at Carrollton, Missouri, to Kansas City, Missouri, for acceptance and, if accepted, were then transmitted to Chicago, Winnipeg and Minneapolis, and therefore that the transactions constituted interstate commerce, and came solely within the scope of the Grain Futures Act, and for that reason were not and could not be gambling or wagering contracts under the Missouri Bucket Shop Law, notwithstanding the fact that no delivery was intended and the transactions were to be closed by market differences.

III.

The Circuit Court of Appeals for the Eighth Circuit has in this case decided an important question of federal law, which has not been, but should be settled by this court, in this, that this case presents the question how far and to what extent, if at all, the Federal Grain Futures Act supersedes, annuls or repeals state laws, particularly those of the State of Missouri, relating to dealings in grain futures and the operation of bucket shops.

## THE FACTS.

On or about the 8th day of November, 1929, the Uhlmann Grain Company, a corporation, filed several suits at law in the United States District Court for the Western Division of the Western District of Missouri to recover of petitioners certain sums of money which it alleged to be due it for commissions on purchases and sales of wheat made on the Kansas City, Chicago, and Winnipeg grain markets. The petition is in conventional form (R. 2).

The amended answers of the defendants (R. 8) denied generally that defendants are indebted to plaintiff in any sum or upon any item alleged in the petition, and further alleged by way of affirmative defense that all of the transactions engaged in were purely fictitious, a mere form and pretense; that said transactions were gambling transactions; that they were illegal and violated the laws of the State of Missouri, and that said claims were not enforceable; and further alleged that there was no intention to accept delivery when defendants purported to purchase grain, or to make delivery when they purported to sell it; and that their gains and losses were to be ascertained by the fluctuations in the market prices of the grain; also alleging that the plaintiff operated a bucket shop in the town of Carrollton where defendants lived, in violation of the Missouri statute.

The reply of plaintiff to defendants' amended answers alleged that the accounts sued on represented

advancements made and commissions earned by the Uhlmann Grain Company on account of the defendants in transactions in grain futures on various boards of trade, and that such transactions were executed and carried out in compliance with the Federal Grain Futures Act (R. 11).

By stipulation entered into in writing (R. 7) a jury was waived and all of the cases consolidated.

In the early part of the year 1924, the Uhlmann Grain Company, in the Town of Carrollton, containing a population of approximately thirty-two hundred, opened a branch office in the basement of the Florence Hotel and installed therein roll-top desks, chairs, blackboard, telegraph instruments, and equipped it with a private telegraph wire communicating with its Kansas City office; and placed in charge of the Carrollton office one E. S. McDonough as its agent and representative (R. 67-112-137). McDonough had full authority to represent the Uhlmann Grain Company. It was his duty to receive orders from Carrollton customers, transmit them over the private telegraph wire *to its office in Kansas City;* likewise it was his duty to solicit customers, which he did, and in a short time he had succeeded in gathering together between forty and fifty customers, none of whom in any way was engaged in the grain business (R. 70-152). These were engaged in various avocations of life, such as ice dealer, employee in printing office, farmers, farmer's wife, laundryman's wife, insurance agent, country merchant, undertaker's employee (R. 115-167-168). Some had no special occupation.

The method of dealing was purely marginal trading. Millions of bushels of grain purported to have been dealt in, but not a single bushel was ever delivered (R. 133-154-156-158). The profits and losses were determined by an ascertainment of the difference in the prices at which the grain was purported to have been bought, and the prices at which it was purported to have been sold (R. 70-134-139).

The financial standing of the defendants was such that none of them could have received and paid for the grain which they purported to have purchased; nor could they have delivered the grain which they purported to sell (R. 158-167), all of which the Grain Company well knew.

The trial judge after hearing all of the evidence found in favor of the defendants (R. 16), and in his findings of fact expressly found that the transactions were all fictitious; that none was actually executed between clearing members of the exchange, and that in all the transactions plaintiff bet with its customers, took the other side of the deal (see Findings of Fact, 10-11, R. 18).

The Uhlmann Grain Company carried the case by appeal to the Circuit Court of Appeals for the Eighth Circuit. Two of the judges concurred in reversing and remanding the cause (Opinion R. 99, Order R. 217), while the third judge dissented (R. 216). The petitioners in due time filed a petition for rehearing in that court (R. 217), which was overruled and denied on March 21, 1932 (R. 220). Petitioners now seek a writ of certiorari from this court to review the majority opinion of said Circuit Court of Appeals.

## REASONS RELIED ON FOR ALLOWANCE OF THE WRIT.

This case involves an important question of local law and an important question of general law in this, that the State of Missouri, in common with most of the other states of the Union, has a series of statutes known as "Bucket Shop Laws" which render unlawful transactions such as those which occurred in this case. The question is therefore presented whether or not the Grain Futures Act (as the Court of Appeals for the Eighth Circuit held in this case) in large measure annuls and supersedes those state statutes and whether such purported contracts are now, under the Grain Futures Act, valid and binding, notwithstanding under the Missouri statutes they are unlawful. This question has never been decided by this court and has never before been decided by any Circuit Court of Appeals. The decision of the Circuit Court of Appeals, holding the Missouri Bucket Shop Law inapplicable to these transactions, is, as we read the law, directly in conflict with the express ruling of the Supreme Court of the State of Missouri interpreting and applying the Missouri Bucket Shop Law to a state of facts almost identical with those in this case (*State* v. *Christopher*, 318 Mo. 225, 2 S. W. (2d) 621).

There is, therefore, inherent in this controversy an apparent conflict between the jurisdiction of a federal statute, the Grain Futures Act, and a state statute, the Missouri Bucket Shop Law. The Missouri Supreme

Court held that the Federal Grain Futures Act does not abrogate or invade the province of the Missouri Bucket Shop Law. The Circuit Court of Appeals for the Eighth Circuit has held in this case that the Grain Futures Act in effect practically nullifies the Missouri Bucket Shop Law.

The Supreme Court of the State of Ohio, in construing an Ohio statute of almost exactly the same import as the Missouri Bucket Shop Law, has also held on facts almost identical with those here that the Federal Grain Futures Act does not limit the application or effect of the Ohio Bucket Shop Law. *C. A. King & Co.* v. *Horton,* 116 Ohio State 205, 156 N. E. 124.

Moreover, the United States District Court for the Northern District of Georgia, in the case of *Fenner* v. *Boykin,* 3 Fed. (2d) 674, in construing and applying the Georgia Bucket Shop Law, held that its effect and application was in nowise limited in relation to the transactions there in issue (which were similar to those here) by the Federal Grain Futures Act.

There is, therefore, a conflict between the decision of the Circuit Court of Appeals for the Eighth Circuit in this case and the opinions of the Missouri Supreme Court, the Ohio Supreme Court and the District Court for the Northern District of Georgia on the construction and application of a local law in relation to the construction, application and effect of a federal law, the Federal Grain Futures Act. The question of the effect of the State Bucket Shop Law is a question of local law; the question of the effect and application of

the Federal Grain Futures Act is a question of general law—both are directly in issue here.

The case was heard before three judges of the Court of Appeals. The main opinion was written by Judge Gardner. A concurring opinion was written by Judge Van Valkenburgh "in view," to use his own language, "of the importance of the question at issue, affecting, as it does, a very necessary unit in our industrial life." A vigorous dissenting opinion was filed by Judge Kenyon, in which he branded the transactions disclosed by the evidence in this case as "fictitious operations" and "gambling transactions" (R. 216). The learned dissenting judge held "the fact that they may be termed 'dealings in futures' sanctioned by the Federal Grain Futures Act does not remove the odor of bucket shop transactions surrounding them," thereby in effect holding that the Grain Futures Act did not abrogate or annul the Missouri statutes relating to bucket shops and grain gambling.

Thus the situation presented by this petition is one where, on an important question of local law and an important question of general law, the majority opinion of Judges Gardner and Van Valkenburgh is directly in conflict with the opinion of the learned trial judge (R. 192), the dissenting opinion of Judge Kenyon, the ruling of the Missouri Supreme Court in *State* v. *Christopher, supra,* the ruling of the Ohio Supreme Court in *King* v. *Horton, supra,* and the ruling of the District Court for the Northern District of Georgia in *Fenner* v. *Boykin, supra.*

We respectfully submit that the action of the Circuit Court of Appeals for the Eighth Circuit in limiting and practically nullifying the Missouri Bucket Shop Law, contrary to the express ruling of the Missouri Supreme Court on similar facts, presents a question which this court ought by all means to review.

We further respectfully submit that the interpretation and application of the Federal Grain Futures Act by the Circuit Court of Appeals for the Eighth Circuit in such a way that speculation in grain futures constitutes interstate commerce where orders are sent to other states to be filled (even tho no grain is intended by the parties to be delivered), and consequently in such a way as to nullify the effect of the Missouri Bucket Shop Law upon such transactions, presents an important question of general law which this court should review.

Wherefore, your petitioners respectfully pray that a writ of certiorari be issued out of and under the seal of this court, directed to the United States Circuit Court of Appeals for the Eighth Circuit, commanding that court to certify to and send to this court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case numbered and entitled on its docket, Number 9119, Uhlmann Grain Company, Appellant, vs. A. P. Dickson, *et al.*, appellees; and that said case be reviewed and determined by this court as provided by Section 240 of the Judicial Code; and that

said judgment of said Circuit Court of Appeals in said case, and every part thereof, may be reviewed by this court, and that your petitioners may have such other or further relief or remedy in the premises as this court may deem appropriate.

S. J. JONES,
G. C. JONES,
RICHARD S. RIGHTER,
*Attorneys for Petitioners, A. P. Dickson, Joe Dickson, I. N. Calvert, C. T. Dickinson and Ernest Miller.*

LATHROP, CRANE, REYNOLDS, SAWYER & MERSEREAU,
*Of Counsel.*

## BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

### Opinions Below.

The two majority opinions (R. 199 and 211), as well as the dissenting opinion, of the Circuit Court of Appeals (R. 216) appear in connection with the transcript of record filed herein. The opinions in the offered reports appear at 56 Fed. (2d) 525. The opinion of the trial judge appears at page 192 of the record, and his findings of fact at page 16.

### Jurisdiction.

The judgment of the Circuit Court of Appeals now sought to be reviewed was entered on February 18, 1932, and appears at record page 217. The jurisdiction of this court is invoked under Section 240a of the Judicial Code (U. S. Code, Title 28, Sec. 344).

### Statement.

The principal facts have already been stated in the petition.

---

### ARGUMENT.

This case involves the important question of how far and to what extent the Federal Grain Futures Act (Title 7, U. S. C. Ann., Secs. 1 to 17, inc.) has invaded the domain of state legislation on the subject of grain

gambling, marginal dealing in grain, speculations on the rise and fall of the markets, and declaring contracts to be wagering or gambling contracts where no delivery was intended and where the transactions were to be closed by an ascertainment of the difference between the price of the grain at which it was contracted for and that at which it was purported to be sold and, generally, the operation of "bucket shops."

The State of Missouri has legislated extensively on these subjects (R. S. Mo. 1929, Secs. 4316 to 4326, inc.). On account of the length of these statutes, they are printed in an appendix hereto (p. 23). The question is, did the Federal Grain Futures Act, *supra*, repeal, annul or supersede these sections of the Missouri statutes? The Federal District Judge who heard the case ruled that it did not (R. 192, l. c. 194). The learned dissenting circuit judge in this case ruled that it did not (R. 216). The Supreme Court of Missouri, in *State* v. *Christopher*, 318 Mo. 225, 2 S. W. (2d) 621, the Supreme Court of the State of Ohio in *King* v. *Horton*, 116 Ohio State 205, 156 N. E. 124, and the Federal District Court of the Northern District of Georgia in the case of *Fenner* v. *Boykin*, 3 Fed. (2d) 674 (affirmed 271 U. S. 242, 70 L. Ed. 927) ruled that it did not.

The question as to the application of the Federal Grain Futures Act and its effect upon the Missouri Bucket Shop Law was before the Supreme Court of Missouri in *State* v. *Christopher, supra*, a prosecution by the state for violation of the Missouri Bucket Shop Law. The case was submitted on an agreed statement

of facts and so strikingly similar are they to the facts in the case at bar that we state them in substance as follows:

The defendant was a member of the Boards of Trade in Kansas City and Chicago and such Boards of Trade were contract markets under the Federal Act; the defendant was engaged in the business of buying and selling grain on commissions for numerous customers for future delivery; the defendant maintained an office in Sedalia, Missouri, in charge of an agent; that defendant furnished market quotations for his Sedalia office over the telegraph wire from Kansas City which, (as in this case) were placed on the blackboard in the office; that defendant's agent received orders for the purchase of grain to be executed on the Kansas City or Chicago Board of Trade as directed by the customer; that the agent (as in this case) transmitted such orders to Kansas City for acceptance; that such orders if accepted were executed on the Kansas City Board of Trade or transmitted by wire for execution on the Chicago Board of Trade, the bulk of the business being done on the Chicago Board of Trade; that after the execution of the trade the customer would be duly notified within a few days by mail of the trade, this being sent from defendant's Kansas City office. The transactions (as in this case) were all designated by number; in short, Christopher had at Sedalia the same equipment that the defendant in this case had at Carrollton, and the dealing was done in the same way; practically all of the transactions were conducted on margin; it was admitted that a large majority of the

persons engaged in these trades were not engaged in the grain business, but were in the transactions for the purpose of gain; it was further admitted that there was no physical delivery of the grain, but all the trades were offset by subsequent sales or subsequent purchases, the same as plaintiff claims was done in this case; it was further admitted that all orders received at Sedalia were actually executed by the defendant upon the exchange, subject to the rules of the exchange. So claims the plaintiff in this case. The orders which the court said were actually executed on the exchange, subject to the rules of the exchange, were confirmed by notice sent out from the Kansas City office; that notice of confirmation was exacly like the notice which was sent out to the customers in the case at bar. The defendant was fined $1,000.00, from which he prosecuted an appeal to the Supreme Court of Missouri. Judge White wrote the opinion of the court sitting *in banc.* One of the questions presented was whether or not Congress by the enactment of the Grain Futures Act had invaded the domain of state legislation on that subject. The court held that it did not, and further, l. c. 627 of the opinion, said: "By all the definitions of 'bucket shop,' the place maintained by the defendant in Sedalia was a bucket shop."

A quotation from the syllabus of the case discloses in condensed form the nature of the court's decision. It reads in part as follows:

"7. SALES ON MARGIN: INTERSTATE COMMERCE: GRAIN FUTURES ACT. The negotiations forbidden by Section 4 of the Grain Futures Act (42 U. S. Stat.

998) do not necessarily constitute deals in interstate commerce. Transactions are not the subjects of interstate commerce simply because they are negotiated between citizens of different states, where the contract itself is to be completed and carried out wholly within the borders of a state, although such contract may incidentally affect interstate commerce.

"8. .....: .....: .....: TRANSACTIONS REMOTE FROM CONTRACT MARKET. The purchase of grain upon margin at a place maintained by defendant in Sedalia, through an agent who wires the purchase to defendant at Kansas City, where he is engaged in buying and selling grain on the board of trade for future delivery, has nothing to do with interstate commerce, although the order for the purchase be executed on the board of trade at Chicago; nor does such a transaction come within the terms of the Grain Futures Act of Congress (42 U. S. Stat. 998). A bucket-shop maintained at Sedalia is not a contract market maintained at Kansas City, within the meaning of said federal statute.

"9. .....: .....: .....: .....: MISSOURI STATUTE: PLACE. To keep and maintain a place in Sedalia where defendant's agent receives orders for the purchase of grain upon margin, with no intention to deliver the grain so sold, and wires them to defendant at Kansas City, where defendant executes them upon the board of trade, or executes them by wire upon a board of trade in a city in another state selected by the purchaser, is unlawful under the Missouri statute (Sec. 3574, R. S. 1919) which makes it a misdemeanor to keep, or cause to be kept, a place wherein is conducted or permitted the pretended buying of grain on margin, when the party selling does not intend to deliver, or the purchaser does not intend to receive, the grain sold and bought; and as to such transactions, said

statute was not supplanted by the Grain Futures Act of Congress. The Missouri statute forbids the keeping of such a place; the Act of Congress forbids the transmission of such orders in interstate commerce."

Other Missouri decisions which support the ruling in *State* v. *Christopher, supra,* and uphold the Missouri Bucket Shop Law are:

*Price* v. *Barnes,* 300 Mo. 216, 254 S. W. 33.
*Conner* v. *Black,* 119 Mo. 126, 24 S. W. 184.
*Smith* v. *Bailey,* 200 Mo. App. 627, 209 S. W. 945.
*Stewart* v. *Hutchinson,* 120 Mo. App. 32, 96 S. W. 253.
*Atwater* v. *Brokerage Co.,* 147 Mo. App. 436, 126 S. W. 823.
*McVean* v. *Wehmeier,* 215 Mo. App. 587, 256 S. W. 1085.
*Elmore-Schultz Grain Co.* v. *Stonebraker,* 202 Mo. App. 81, 214 S. W. 216.

In the case of *C. A. King & Co.* v. *Horton,* 116 Ohio St. 205, 156 N. E. 124, the question of the application of the Grain Futures Act and its relation to the Ohio Bucket Shop Law was involved, that is, the question whether the Grain Futures Act superseded and annulled the Ohio Bucket Shop Law. (The Ohio Bucket Shop Law was in all essential particulars the same as the Missouri Bucket Shop Law.) So far as the opinion discloses, the facts appear to be essentially similar to the facts in the case at bar and in the Christopher case, *supra.* The court expressly held, without regard to whether the transaction was ultimately consummated on a contract market beyond the borders of the state, that trading in grain futures

which did not contemplate an actual delivery of the commodity but a mere completion of the transaction by a corresponding sale or purchase was not interstate commerce and therefore that the Federal Grain Futures Act did not prohibit such a transaction from being unlawful in Ohio under the Ohio Bucket Shop Law. Syllabus number 6 in the Northeastern Reporter fairly summarizes the court's ruling:

> An executory contract, made in the State of Ohio between persons in the State of Ohio, which the party paying or to pay does not intend to complete by receiving or delivering the whole of that which is so contracted for, but to resell before the time fixed by contract for such delivery, or at such time to pay or receive the difference between the contract price and the market price, is not a transaction in interstate commerce.

Such under the facts was the situation in the case at bar.

It will be noted that some reliance has been placed upon the case of *State ex rel. Burnett* v. *Rosenbaum Grain Co.*, 115 Kans. 40, 222 Pac. 80, as holding that the Grain Futures Act did supersede the Kansas statutes on the subject of bucket shops. The Supreme Court of Kansas having so held necessarily brings about a conflict of state decisions on the subject here discussed; that is to say, the Kansas Supreme Court is in conflict with both the Missouri Supreme Court in the Christopher case, *supra*, and the Ohio Supreme Court in the King case, *supra*, and likewise is in conflict with the case of *Fenner* v. *Boykin*, 3 Fed. (2d) 674.

The case of *Fenner* v. *Boykin, supra,* was a suit brought for citizens of other states than Georgia, brokers and members of cotton exchanges in New York, New Orleans and Chicago who operated an office in Fulton County, Georgia, to enjoin the enforcement of statutes of the State of Georgia similar to those of the State of Missouri on the subject of bucket shops. The modes of dealing, executing orders, closing out contracts and making settlements between the brokers and the customers were almost identical with those in the case at bar. It was held by that court that such transactions were not interstate commerce and that the prohibitory statutes of Georgia were not superseded by the federal law on the subject. We quote from the opinion as follows (l. c. 677):

> Transactions such as are here condemned are not commerce at all and if carried on across state lines are not sanctified thereby. They are not interstate commerce, but interstate gambling. *Alex* v. *State,* 86 Ga. 246, 12 S. E. 408, 10 L. R. A. 859.

It has long since been recognized that the operation of bucket shops is a public evil, a menace to morals and to the general welfare and should be prohibited (*Western Union Telegraph Co.* v. *Hammond,* 3 L. R. A. (N. S.) 153 (Ind. 76 N. E. 100). Many, if not all of the states of the Union, in the exercise of their valid *police power,* have legislated against such practices, and such power of the states to so legislate has been expressly upheld and sustained in *House* v. *Mayes,* 219 U. S. 270, 55 L. Ed. 213; *Chicago, B. & Q. Ry. Co.* v. *Illinois,* 200 U. S. 561, 50 L. Ed. 596.

It is clear, therefore, that if, as petitioners contend, the effect of the opinion of the Circuit Court of Appeals for the Eighth Circuit in the case at bar is to limit and curtail the valid exercise by the state of its *police power* by classifying as interstate commerce that which is not, then the opinion of the Court of Appeals is plainly wrong and in conflict with the above decisions of this court and ought to be set aside.

It is, of course, plain, and the opinion of Judge Gardner in this case holds, that the Federal Grain Futures Act does not legalize wagering on the fluctuation in the price of grain if that was previously illegal. It is equally plain, and was not seriously disputed by appellant in the courts below, nor does the Circuit Court of Appeals deny, that if the Missouri Bucket Shop Law is enforceable in this case it voids the transactions here in question. It seems plain that this court has expressly held such wagering on the fluctuations in the market, as the evidence in this case discloses, to be gambling or wagering transactions. *Irwin* v. *Williar,* 110 U. S. 499, 508, 28 L. Ed. 225; *Embrey* v. *Jemison,* 131 U. S. 336, 33 L. Ed. 132; *Clews* v. *Jamieson,* 182 U. S. 461, 45 L. Ed. 1183.

In *Chicago Board of Trade* v. *Christie,* 198 U. S. 236, 49 L. Ed. 1031, this court said, l. c. 249:

> "Purchases *made with the understanding that the contract will be settled by paying the difference between the contract and the market price* at a certain time, *Embrey* v. *Jemison,* 131 U. S. 336; *Weare Commission Company* v. *People,* 209 Ill. 528, stand on different ground from purchases made merely

with the expectation that they will be satisfied by set-off'' (italics ours).

The decision in that case deals with an entirely different situation from that disclosed by the facts in this case, for here the evidence expressly disclosed that it was contemplated and intended by the parties that there should be no delivery of the commodity purchased or sold but that each transaction should be terminated by an ascertainment of the difference in the market price at which the grain was contracted for and at which it was sold—a situation which stands on quite a different footing from that countenanced by the opinion of Mr. Justice Holmes in the Christie case.

Consequently, under the decisions quoted, the parties in this case were engaged in wagering or gambling contracts; such contracts are declared void by the Missouri Bucket Shop Law; the Federal Grain Futures Act does not declare them valid. It necessarily follows that the Federal Grain Futures Act does not, and in the nature of things cannot, give validity to transactions declared void by the Missouri law, and the opinion of the majority of the Circuit Court of Appeals in this case to the contrary is wrong.

**Conclusion.**

We respectfully urge that the situation presented by this case is of such importance, the opinions of Judge Gardner and Judge Van Valkenburgh in this case are so clearly contrary to sound principle and so plainly infringe upon the police power of the state

exercised under the evidence here in the State's own proper sphere, that we respectfully request this Honorable Court to take jurisdiction in this case, grant the writ of certiorari herein prayed for, and resolve the questions herein presented, or rather suggested, on the merits.

S. J. Jones,
G. C. Jones,
Richard S. Righter,
*Counsel for Petitioners.*

Lathrop, Crane, Reynolds, Sawyer & Mersereau,
*Of Counsel.*

## APPENDIX.

Section 4316, Vol. I, Revised Statutes of the year 1929, and which appeared in the Revised Statutes of Missouri for the year 1919 as Section 3564, provides as follows:

> "Whoever, as principal, or as agent of any corporation or person or persons, shall set up and carry on a 'bucket shop,' or any person who shall accept employment from any person or persons, or corporations engaged in carrying on a bucket shop, and shall under such employment in any manner or capacity assist in the carrying on of a bucket shop, shall be guilty of a felony."

Section 4317, Revised Statutes for the year 1929 which appeared in the Revised Statutes of Missouri for the year 1919 as Section 3565, provides as follows:

> "A bucket shop, in the meaning of the preceding section, is a place wherein the person carrying on the bucket shop, then and there, either as principal or agent, pretends to buy or sell, or goes through the form of buying and selling, to or for any other person or persons, stock, bonds, petroleum, cotton, grain, provisions and other commodities, or any one or more of the same, at prices fixed or pretended to be fixed by trades or transactions made or offered to be made in same on boards of exchange or otherwise, but wherein there is in fact no actual purchase and sale, or sale and purchase of such commodity for or on account of the party or parties thereto."

Section 4318, Revised Statutes of Missouri for the year 1929, which appeared in the Revised Statutes of Missouri for the year 1919 as Section 3566, provides as follows:

> "All pretended purchases and sales or contracts and agreements for the pretended purchase and sale of the commodities aforesaid, in manner aforesaid, wherein there is, in fact, no actual purchase and sale or sale and purchase of such commodities for or on account of the party or parties thereto, are hereby declared gambling and criminal acts, whether the order or contract for the pretended purchase or sale of such property purports to be offered, accepted, executed or consummated in this state or in any other state or country: Provided, the offer to make such pretended purchase or sale of said property is placed or given or communicated from this state; and any person violating the provisions of this section shall be guilty of a felony."

Section 4319, Revised Statutes of Missouri for the year 1929, which appeared in the Revised Statutes of Missouri for the year 1919 as Section 3567, provides as follows:

> "It shall be unlawful for any corporation, copartnership, person or persons in the control of or engaged in the operation or conduct, as owner or lessee, of any telegraph or telephone lines to transmit or permit to be transmitted over their said lines in this state any message or communication conveying any order or contract for the pretended purchase and sale, or sale and purchase, of any such commodity or any acceptance or confirmation thereof. And any person whether acting individually or as an officer, member, agent, or employee of any corporation, association or co-

partnership, who violates the provisions of this section shall be guilty of a felony."

Section 4320, Revised Statutes of Missouri for the year 1929, which appeared in the Revised Statutes of Missouri for the year 1919 as Section 3568, provides as follows:

"It shall not be necessary, in order to commit the offense defined in the four preceding sections, that both the buyer and seller, or both the parties pretending to buy and sell the said commodities, shall agree to do any of the acts herein prohibited, but the said crime shall be complete against any person acting individually, or as an officer, member, agent, or employee of any person, corporation, association, or copartnership thus pretending or offering to sell, or thus pretending or offering to buy, whether the offer to sell or buy is accepted or not; and any person acting individually, or as an officer, member, agent or employee of any person, corporation, association or copartnership who shall communicate, receive, exhibit, or display in any manner, any such offer to buy or sell, or any statements or quotations of the prices of any such property, with a view to any such transaction as aforesaid, shall, for each such offense, be deemed and held to be an accessory thereto, and be guilty of a felony."

Section 4321, Revised Statutes of Missouri for the year 1929, and which appeared in the Revised Statutes of Missouri for the year 1919 as Section 3569, is as follows:

"It shall be the duty of every commission merchant, copartnership, association, corporation or broker, doing business as such, to furnish to every customer or principal for whom such com-

> mission merchant, broker, copartnership, corporation or association has or pretends to have executed any order for the purchase or sale of any of the commodities hereinbefore mentioned, either for immediate or future delivery, a written statement containing the names of the parties from whom any such property was bought, or to whom it shall have been sold, as the case may be, the same when, the place where, and the price at which the same was either bought or sold; and in case such commission merchant, broker, copartnership, corporation or association shall refuse promptly to furnish such statement upon reasonable demand, the fact of such refusal shall be *prima facie* evidence that such property was not sold or bought in a legitimate manner upon the open market, but was in violation of the five preceding sections, and such fact shall be competent evidence in any criminal prosecution brought for a violation of such sections."

Section 4322, Revised Statutes of Missouri for the year 1929, and which appeared in the Revised Statutes of Missouri for the year 1919 as Section 3570, provides as follows:

> "Any person guilty of a violation of the six preceding sections shall be deemed guilty of a felony, and upon conviction, shall be punished by imprisonment in the penitentiary for not less than two nor more than five years, or by imprisonment in the county jail for not less than six nor more than twelve months."

Section 4323, Revised Statutes of Missouri for the year 1929, which appeared in the Revised Statutes of Missouri for the year 1919 as Section 3571, is as follows:

"Whoever knowingly permits any of the gambling acts aforesaid in his or their building, house or in any outhouse, booth, arbor, or erection of which he or they have the care and possession, shall be fined not less than five hundred dollars nor more than fifteen hundred dollars for each and every offense, and any penalty so adjudged shall be a lien upon premises on or in which such unlawful acts are carried on or permitted. It is the intention of Sections 4316 to 4322 inclusive, to prevent and prohibit within this state any person, corporation or association or copartnership from dealing in, by either selling or purchasing, any stocks, bonds, article or commodity when an actual delivery is not contemplated, and each and every day the unlawful business prohibited by said sections is carried on shall constitute a separate offense, and all contracts made in violation of said sections shall be considered gambling contracts, and shall be void; all fines collected under the provisions of said sections shall be paid to the state treasurer, and shall become a part of the common school fund of this state. If default is made in the payment of any fine mentioned in said sections, the person so defaulting shall be imprisoned in the county jail not less than six nor more than twelve months."

Section 4324, Revised Statutes of Missouri for the year 1929, which appeared in the Revised Statutes of Missouri for the year 1919 as Section 3572, is as follows:

"All purchases and sales or pretended purchases and sales, or contracts and agreements for the purchase and sale, of the shares of stocks or bonds of any corporation, or petroleum, provisions, cotton, grain or agricultural products whatever, either on margin or otherwise, without any intention of receiving and paying for the property

so bought, or of delivering the property so sold, and all the buying or selling or pretended buying or selling of such property on margins or on optional delivery, when the party selling the same, or offering to sell the same, does not intend to have the full amount of the property on hand or under his control to deliver upon such sale, or when the party buying any of such property or offering to buy the same does not intend actually to receive the full amount of the same if purchased, are hereby declared to be gambling and unlawful, and the same are hereby prohibited. Any company, copartnership or corporation, or member, officer or agent thereof, or any person found guilty of a violation of the provisions of this section, shall be fined in a sum not less than three hundred dollars nor more than three thousand dollars."

Section 4325, Revised Statutes of Missouri for the year 1929, which appeared in the Revised Statutes of Missouri for the year 1919 as Section 3573, is as follows:

"It shall not be necessary, in order to commit the offense defined in the preceding section, that both the buyer and seller shall agree to do any of the acts above prohibited, but the said offense shall be complete against any corporation, association, copartnership or persons thus pretending or offering to sell, or thus pretending or offering to buy, whether the offer to sell or buy is accepted or not; and any corporation, association, copartnership, or person, or agent thereof, who shall communicate, receive, exhibit or display in any manner any such offer to buy or sell, or any statements or quotations of the prices of any such property, with a view to any such transaction as aforesaid, shall, for each such offense, be deemed and held to be an accessory thereto, and, upon

conviction thereof, shall be fined the same as the principal; and any such corporation, association, copartnership or person or agent permitting any such communication, reception, exhibit or display shall, for every such offense, be fined a sum not less than three hundred dollars nor more than two thousand dollars."

Section 4326, Revised Statutes of Missouri for the year 1929, which appeared in the Revised Statutes of Missouri for the year 1919 as Section 3574, is as follows:

"It shall be unlawful for any corporation, association, copartnership or person to keep or cause to be kept in this state, any office, store or other place wherein is conducted or permitted the pretended buying or selling of the shares of stocks or bonds of any corporation, or petroleum, provisions, cotton, grain or agricultural products whatever, either on margins or otherwise, without any intention of receiving and paying for the property so bought, or of delivering the property so sold, or wherein is conducted or permitted the pretended buying or selling of such property on margins, when the party selling the same, or offering to sell the same, does not intend to have the full amount of property on hand or under his control to deliver upon such sale, or when the party buying any of such property, or offering to buy the same, does not intend actually to receive the same if purchased, or to deliver the same if sold; and the keeping of all such places is hereby prohibited; and any person, company, copartnership or corporation, or officer or agent thereof, that shall be guilty of violating this section, shall upon conviction thereof, be fined in a sum not less than five hundred dollars nor more than five thousand dollars."

FILE COPY

FILED
OCT 31 1932
CHARLES ELMORE CROPLEY
CLERK

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1932.

## No. 63.

A. P. DICKSON, JOE DICKSON, I. N. CALVERT, C. T. DICKINSON AND ERNEST MILLER, PETITIONERS,

VS.

UHLMANN GRAIN COMPANY, A CORPORATION, RESPONDENT.

**PETITIONERS' SUPPLEMENTAL BRIEF IN SUPPORT OF THEIR PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.**

S. J. JONES,
*Attorney for Petitioners.*

G. C. JONES,
RICHARD S. RIGHTER,
LATHROP, CRANE, REYNOLDS, SAWYER & MERSEREAU,
*Of Counsel.*

FILE COPY

OCT 31 1932
CHARLES ELMORE CROPLEY
CLERK

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1932.

## No. 63.

A. P. DICKSON, JOE DICKSON, I. N. CALVERT, C. T. DICKINSON AND ERNEST MILLER, PETITIONERS,

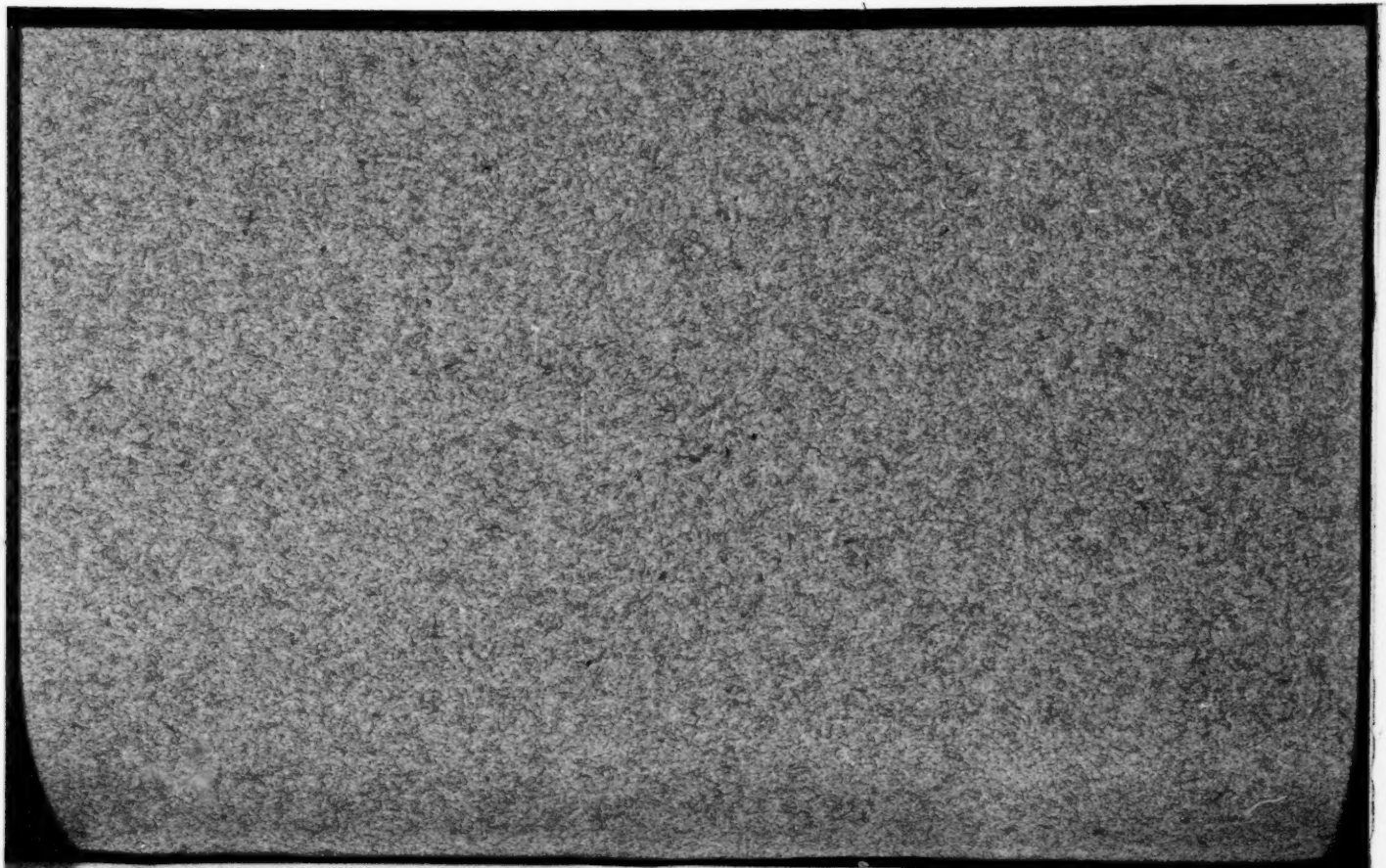
VS.

UHLMANN GRAIN COMPANY, A CORPORATION, RESPONDENT.

## PETITIONERS' SUPPLEMENTAL BRIEF IN SUPPORT OF THEIR PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

S. J. JONES,
*Attorney for Petitioners.*

G. C. JONES,
RICHARD S. RIGHTER,
LATHROP, CRANE, REYNOLDS, SAWYER & MERSEREAU,
*Of Counsel.*



## INDEX

Statement of the Case ..... 1

Summary of the Argument ..... 12

Argument—

I. The transactions shown in evidence are illegal and void under the Missouri Bucket Shop Law ..... 15

II. The transactions shown in evidence are illegal and void at common law irrespective of the Missouri Bucket Shop Law ..... 22

III. The Federal Grain Futures Act does not supersede the Missouri Bucket Shop Law or legalize wagering transactions which were theretofore illegal at common law ... 32

A. The right to enact legislation restricting gambling in grain futures is within the police power of the State of Missouri .. 32

B. The Missouri Bucket Shop Law does not affect interstate commerce but affects only acts committed in Missouri, which the Federal Grain Futures Act does not and cannot regulate ..... 32

IV. The findings of fact of the trial court numbered ten and eleven that the transactions between petitioners and respondent were fictitious transactions and that respondent bet with petitioners in those transactions, had the same effect as a verdict of the jury, and the Circuit Court of Appeals for the Eighth Circuit had no right to set its findings aside under the evidence in this record ..... 41

V. Respondent's reply below to petitioners' answer pleaded that the transactions upon which the right of recovery was based occurred on the Chicago and Minneapolis Boards of Trade in pursuance of, and in compliance with, the Federal Grain Futures Act. Respondent's evidence failed to make good its reply and the trial court properly found for petitioners upon the defense pleaded in their answer, even if the Grain Futures Act superseded the Missouri Bucket Shop Law with respect to the interstate transactions ..... 42

Conclusion ..... 45

CASES CITED

Atwater vs. Brokerage Co., 147 Mo. App. 436, 126 S. W. 823 ..... 12, 20

Booth vs. Illinois, 184 U. S. 425, 46 L. Ed. 623 .. 13, 32

C. A. King & Co. vs. Horton, 156 N. E. 124 (Ohio) ..... 14, 34, 35

C. B. & Q. Ry. Co. vs. Illinois, 200 U. S. 561, 50 L. Ed. 596 ..... 13, 32

Clews vs. Jamieson, 182 U. S. 461, 45 L. Ed. 1183 ..... 12, 24

Connor vs. Black, 119 Mo. 126, l. c. 141, 24 S. W. 184 ..... 12, 20

Edwards Brokerage Co. vs. Stevenson, 160 Mo. 516, 61 S. W. 617 ..... 13, 31

Elmore-Schultz Grain Co. vs. Stonebraker, 202 Mo. App. 81, 214 S. W. 216 ..... 12, 13, 20, 31

Embry vs. Jemison, 131 U. S. 336, 33 L. Ed. 172 ..... 12, 23, 24

Fenner vs. Boykin, 3 Fed. (2d) 674, l. c. 684 (D. C. N. D. Ga.) Aff. 271 U. S. 240 ..... 13, 14, 16, 25, 40, 41

Gettys vs. Newberger, 272 Fed. 209 (C. C. A. 8th), l. c. 217 ..... 12, 25
Hill vs. Wallace, 259 U. S. 44 ..... 14, 39
House vs. Mayes, 219 U. S. 270, 55 L. Ed. 213 ... 13, 32
Irwin vs. Williar, 110 U. S. 499, 28 L. Ed. 225 ..... 12, 14, 22, 24, 30, 41
James vs. Clement, 223 Fed. 385 (C. C. A. 5th) ..... 12, 25, 26, 28
McDaniel vs. Tullis Craig Co., (Texas) 11 S. W. (2d) 203, l. c. 205 ..... 13, 14, 28, 41
McVean vs. Wehmeier, 215 Mo. App. 587, 256 S. W. 1085, l. c. 1087 ..... 12, 13, 20, 31
Riordon vs. McCabe, 173 N. E. 660 (Ill.) ... 13, 14, 25, 41
Roundtree vs. Smith, 108 U. S. 269 ..... 12, 24
Seeligson vs. Lewis, 65 Texas 215 ..... 13, 30
Smith vs. Bailey, 200 Mo. App. 627, 209 S. W. 945 ..... 12, 19
State vs. Christopher, 318 Mo. 225, 2 S. W. (2d) 621 ..... 12, 13, 14, 31, 32, 41
State vs. Kentner, 178 Mo. 487, 77 S. W. 522, 12, 16, 19
Stewart vs. Hutchinson, 120 Mo. App. 32, l. c. 36, 96 S. W. 253 ..... 12, 20
Ware and Leland vs. Mobile County, 209 U. S. 405 ..... 14, 36, 39
Williamson vs. Majors, 169 Fed. 754, l. c. 762 ... 13, 28
Woolfolk vs. Duncan, 80 Mo. App. 421 ..... 12, 20
Wright-Blodgett Co. vs. United States, 236 U. S. 397 ..... 13, 26

STATUTES CITED

Revised Statutes of Missouri 1929, Sections 4317 to 4326, inc. ..... 12, 15, 20, 21

ACTS OF CONGRESS

Federal Grain Futures Act, Sections 6 and 7, Chapter 1, Title 7, U. S. Code Ann. ..... 14, 42, 43

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1932.

## No. 63.

A. P. DICKSON, JOE DICKSON, I. N. CALVERT, C. T. DICKINSON AND ERNEST MILLER, PETITIONERS,

VS.

UHLMANN GRAIN COMPANY, A CORPORATION, RESPONDENT.

### STATEMENT OF THE CASE.

A concise statement of the facts is set out at pages 4, 5 and 6 of the petition for a writ of certiorari herein. We need only supplement the statement there by saying that the record plainly discloses that in all of the pretended transactions of purchase and sale of grain described in the record it was understood and agreed and intended by both petitioners and respondent that there should be no delivery of the grain purported to be bought or purported to be sold, but that instead

there should be a mere payment by one party to the other of the difference between the market price and the contract price. Mr. O. W. Rowe, Chief Clerk in respondent's (plaintiff's) Kansas City office testified (R. 68-69):

> "If a customer bought 10,000 bushels at a certain price, that would be the contract price. If it was sold for more than that he would have a profit. In determining whether or not he had a profit or a loss, you would take the price at which it was bought and the market price at which it was sold. That is the way it was done; the trades were all closed out. During the period when these defendant customers were operating we would call on them to put up money in the way of margins. This would be done if their account showed a loss at the time.
> "A. Well, if their account showed a loss at the time, between what they had bought it and what they had sold it, and the present markets, that would determine how much they owed us or how much we owed them.
>
> * * * * * * *
>
> "Q. Now, in a general way, what you have stated is the way these trades were carried on, all of them?
> "A. That is true; yes, sir."

E. S. McDonough, respondent's (plaintiff's) agent who opened and conducted respondent's office at Carrollton where all of the transactions involved were initiated, testified (R. 114-115):

> "It was determined whether or not these customers had money coming to them or owed us money by the difference in the price of the market and the price of the commodity in which they were

interested; the price at which it was bought and sold and prevailing price at the time the reckoning was made. That is to say, if they bought the grain on a certain date at a certain price and then sold later, and the price on the date on which they sold had advanced, they made a profit, and if it had gone down, if the trade was closed, it showed loss. Uhlmann Grain Company reserved the right to close the transaction at any time they wanted to without notice; that is, I think they did. I think that many times they acted on that authority; and I think they did so with reference to some of the customers at Carrollton. I do not say all of them. The majority of our customers at Carrollton were farmers. I have no recollection of any of them having taken delivery of the grain which they bought."

McDonough denied that there was any understanding that no grain was to be delivered.

Paul Uhlmann, vice president of respondent (plaintiff) testified (R. 139):

"When we settle with our customers, we ascertain the amount they were to pay or were to receive in this way. If they made a profit, we paid them what we owed them. The profit was ascertained after the transaction was closed out. We settled all differences between what the market when when they bought and what it was when they sold. That would determine our liability to them and their liability to us. If the fluctuations in the market showed an increase between the time they bought and the date they sold, that difference would represent their profit and what we owed them. These trades—of course, it was not just the difference in the prices—the trades—we actually have to pay the money to the Board of Trade."

T. H. Cramer, one of petitioners, testified (R. 155):

> "He (McDonough) explained how they done these things. He was talking about a spread at that time. I don't remember what spread it was, probably Winnipeg or Chicago spread, I think, and I had heard of people, you understand, tapping the market and I wanted to get the details. He explained that you could buy on one market and sell on another and make some money. I would find out whether I made money or not by the rise and fall of the market. If the market went in our favor you made money, and if it went the other way, you would lose money. After he made that explanation to me, well I says, 'Mac, I don't want to get into anything I will be reliable for; I don't want to get in anything that will get me caught with a big chunk of wheat.' He said, 'I will take care of that, you don't need to worry. I will see that you get out of that before time for delivery and will make you some easy money.' That was before I made any operation."

Amos (A. P.) Dickson, one of the petitioners, testified (R. 157) that he started speculating at the solicitation of E. S. McDonough. The witness testified (R. 157-158):

> "I speculated on the Board of Trade. I came to start it because he (McDonough) came in our place of business and solicited. I mean our store. He would tell about these trades or spreads and how to make some easy money, and I told him I couldn't take care of any wheat at all. 'Well,' he said, 'start in a small way,' so he bought me 5,000 bushels and we understood there would be no delivery and I couldn't pay for it because at the time I was obligated at the bank. I couldn't take any wheat at all. I told him that. He said, 'All right, you will never have to take it.' I

bought 5,000 bushels. I don't remember what Board of Trade he claimed to have bought it on."

Dickson explained to McDonough (R. 158) that he owed $4,000.00 at the bank, that he was not worth more than one-fourth of that amount, and that he was largely obligated to the wholesale houses. The witness knew nothing about trading and placed entire reliance on McDonough (R. 159).

It was stipulated between the parties (R. 167) that all of petitioners if called and sworn would deliver the same testimony as that of A. P. Dickson (Amos Dickson).

It appears from the testimony of O. W. Rowe, respondent's chief clerk (R. 29, *et seq.*), that the five petitioners here (defendants below) and S. P. Dickinson, also a farmer, altogether traded in a total of 3,035,000 bushels of grain (R. 135) in a period of about eight months—from March to November, 1924. The amounts traded in were as follows:

| | |
|---|---|
| A. P. Dickson | 555,000 bushels |
| I. N. Calvert | 685,000 " |
| Joe Dickson | 585,000 " |
| Ernest Miller | 535,000 " |
| C. T. Dickinson | 70,000 " |
| S. P. Dickinson | 605,000 " |

The record discloses that none of the petitioners ever received or delivered a single bushel of grain and the trial court so found (Finding of Fact No. 6, R. 187).

The trial court expressly found that all of the transactions of purchase and sale were fictitious, that none was actually executed between members of the exchanges; that in all of the transactions plaintiff bet with its customers and took the other side of the deal (Findings of Fact 10 and 11, R. 188).

It was one of E. S. McDonough's duties to solicit customers in Carrollton and accordingly he accumulated about fifty customers there (R. 70 and 152). Petitioners (defendants) in common with respondent's 45 other customers at Carrollton had no facilities for accepting delivery of and storing the wheat, which they purported to buy, nor were they financially able to accept delivery and pay for it. Neither were they financially able to purchase, pay for or deliver the grain which they contracted to sell; nor was any effort made by respondent to ascertain the financial standing of the petitioners or any of them. None of the petitioners was a grain merchant nor engaged in a line of business whereby he could make use of the grain (R. 102-147-154-158-165).

Mr. McDonough testified (R. 112-113):

> "I went outside the office to solicit. I solicited option business from Dickinson of Tina, and his two sons, and Tom Cramer. I mean Charles T. Dickinson and W. L. Dickinson and V. M. Dickinson. I also solicited A. P. Dickson and Joe Dickson, merchants in Tina. I talked business with them at various places, driving in their automobile, at their store, in my office, at the hotel, at my home where I was living, on the street. They approached me first. One of the

boys, Joe Dickson, approached me first. I think he approached me when we were riding in his automobile. I also solicited Tom Mobley and James C. Allemont. I also solicited that very prominent farmer in Tina, Ernest Miller. There were many others whose names I cannot recall. I met Allemont on the train going to Tina when I first came to Carrollton before we had really opened the office. We were engaged in conversation, engaged in conversation on generalities, and I introduced myself to him, he introduced himself to me. I had heard of him before as having been quite a speculator in grain. Before going there I had been given list of men who had speculated with other houses. I was given a list by a man in Bloomington who used to run an office in Carrollton. He was in the employ of Claiborne. The Claiborne Commission Company had an office there several years prior to that. This man gave me a list—knowing that I was going to Carrollton—he gave me a list of names to call upon, and most of these were included in that list.

"The only advice that I gave was recommendations that I received from my firm relative to spread transactions."

Respondent (plaintiff), the evidence shows, had full control and dominion over all transactions and exercised that control. Respondent exercised it by transferring the account from one trade month to another; many times it did this without the knowledge or consent of petitioners (R. 132-133-142). And at times respondent bought for petitioners without exacting additional margins (R. 133). "The whole matter was in our (respondent's) hands" (R. 147).

In all of the transactions that took place during the entire time the office of respondent was maintained at Carrollton and in all the statements of purchases and sales rendered to petitioners the name of the purchaser was not disclosed in those cases where sales were purported to have been made, nor was the name of the seller disclosed in those cases where it was claimed that petitioners made a purchase (R. 101-102).

Respondent exercised its right to close out the transactions and did so, for it is shown by the testimony of Mr. Rowe that respondent stood behind the deals itself. In some of the transactions petitioners had notes up instead of cash, while others had no margins at all. Respondent was carrying these transactions on its own responsibility and sustained losses in the last transactions (R. 181).

That respondent knew petitioners were speculating and gambling on the fluctuations of the market is well established by letters written by respondent to two of its Carrollton customers, namely, by a letter to Mr. R. A. Thompson dated November 12, 1924, in which respondent admitted in a sympathetic way the mistakes that had been made, and that "we are certainly awfully sorry that we got off so badly on this 'spread,' and it is really the first bad one we have had since we have been in the business." Then followed by stating that there was a good chance for improvement and advised a reduction in Mr. Thompson's holding, and proposed to handle the matter the best they could (R. 153).

Then, on November 13, respondent addressed a letter to Mr. I. N. Calvert, petitioner, one of its Carrollton customers, in which it expressed its sorrow that the Winnipeg spread turned out so badly and gave the assurance that at all times they would give their very best advice, and expressed the desire that Mr. Calvert would continue in the business and felt sure that they could help him regain his losses (R. 153-154).

Respondent reserved the right to close the account at any time it wanted to. So said Paul Uhlmann, vice president and manager of respondent's Kansas City office (R. 142). Also, that in these cases the men, meaning petitioners, wanted to carry their trades until they owed respondent a certain amount and then wanted to be closed out, and he did; that this condition was because of the fact that petitioners were indebted to respondent when the accounts were closed because they had lost money on their trades; "and in those cases where we have sued on the notes we have a book account of the items that make up the amount of the notes. In a good many cases the notes are for a larger amount than the people owed us. The notes were given to us just like money" (R. 142-143). The notes referred to are notes that petitioner C. T. Dickinson gave respondent. Some time before respondent closed its Carrollton office, Mr. C. T. Dickinson, one of the petitioners herein, being unable to further margin his deals, was advised by Mr. McDonough to go to Chicago and see Mr. Fred Uhlmann.

He followed that advice and went to Chicago and at the instance and suggestion of Mr. Fred Uhlmann

agreed to give notes and at the time Mr. Fred Uhlmann advised him to keep on trading; that in a day or two after this conversation and having returned home McDonough came to Tina, Missouri, at which time and place the notes were given; that at the time Mr. Uhlmann suggested the giving of the notes he was encouraged to keep on trading and was assured he would not get into any more losses; that if he did he would get him into another deal and work it out (R. 168-169).

Respondent offered evidence to the effect that the manner of conducting its transactions with its customers at its Carrollton office was that Mr. McDonough, its agent, received verbal orders for the purchase or sale of grain which were wired to its Kansas City office for approval or rejection, and that if the orders were accepted it then relayed or rewired the orders to some one of the grain exchanges for execution, and claimed that such orders were actually executed on some one of the boards of trade, after which it transmitted from its Kansas City office advice to that effect to its customers.

There was no documentary evidence offered at the trial showing that this procedure was adopted in the case of any Carrollton customer. The testimony simply describes what is claimed to be the general course of respondent's business illustrated by exhibits effecting transactions on contract markets with persons other than the customers at Carrollton. There were no exhibits offered in evidence showing who the grain was bought

from, if any was bought, nor to whom it was sold if any was sold (R. 56 to 100, incl.).

From the foregoing, as well as all the other facts appearing in the transcript of the record, the trial judge found in favor of the petitioners and rendered judgment accordingly, from which respondent in this case appealed to the Circuit Court of Appeals for the Eighth Circuit, where, in an opinion by Judge Gardner concurred in by Judge Van Valkenburgh, Judge Kenyon dissenting, the case was reversed and remanded for further proceedings on the principal ground that the transactions in evidence were lawful under the Grain Futures Act and that that Act superseded the Missouri statutes on the subject of bucket shops and grain gambling contracts. Thereupon this petition for a writ of certiorari was applied for to this court.

## SUMMARY OF THE ARGUMENT.

### I.

**The transactions shown in evidence are illegal and void under the Missouri Bucket Shop Law.**

Section 4317, Revised Statutes of Missouri 1929.

*State* v. *Kentner,* 178 Mo. 487, 77 S. W. 522.

*State* v. *Christopher,* 318 Mo. 225, 2 S. W. (2d) 621.

*Smith* v. *Bailey,* 200 Mo. App. 627, 209 S. W. 945.

*Elmore-Schultz Grain Co.* v. *Stonebraker,* 202 Mo. App. 81; 214 S. W. 216.

*Stewart* v. *Hutchinson,* 120 Mo. App. 32, l. c. 36, 96 S. W. 253.

*Connor* v. *Black,* 119 Mo. 126, l. c. 141, 24 S. W. 184.

*Atwater* v. *Brokerage Co.,* 147 Mo. App. 436, 126 S. W. 823.

*Woolfolk* v. *Duncan,* 80 Mo. App. 421.

*McVean* v. *Wehmeier,* 215 Mo. App. 587, 256 S. W. 1085.

Section 4318, Revised Statutes Missouri, 1929.

### II.

**The transactions shown in evidence are illegal and void at common law irrespective of the Missouri Bucket Shop Law.**

*Irwin* v. *Williar,* 110 U. S. 499, 28 L. Ed. 225.

*Embry* v. *Jemison,* 131 U. S. 336, 33 L. Ed. 172.

*Roundtree* v. *Smith,* 108 U. S. 269.

*Clews* v. *Jamieson,* 182 U. S. 461, 45 L. Ed. 1183.

*Gettys* v. *Newberger,* 272 Fed. 209 (C. C. A. 8th), l. c. 217.

*James* v. *Clement,* 223 Fed. 385 (C. C. A. 5th).

*Riordon* v. *McCabe*, 173 N. E. 660 (Ill.).

*Fenner* v. *Boykin*, 3 Fed. (2d) 674, l. c. 684 (D. C. N. D. Ga.) Aff. 271 U. S. 240.

*Wright-Blodgett Company* v. *United States*, 236 U. S. 397.

*Williamson* v. *Majors*, 169 Fed. 754, l. c. 762.

*McDaniel* v. *Tullis Craig Co.*, 11 S. W. (2d) 203 (Texas) l. c. 205.

*Seeligson* v. *Lewis*, 65 Texas 215.

*State* v. *Christopher*, 318 Mo. 225, 2 S. W. (2d) 621.

*McVean* v. *Wehmeier*, 215 Mo. App. 587, 256 S. W. 1085 (Mo. App.), l. c. 1087.

*Edwards Brokerage Co.* v. *Stevenson*, 160 Mo. 516, 61 S. W. 617.

*Elmore-Schultz Grain Co.* v. *Stonebraker*, 202 Mo. App. 81, 214 S. W. 216.

III.

**The Federal Grain Futures Act does not supersede the Missouri Bucket Shop Law or legalize wagering transactions which were theretofore illegal at common law.**

A. The Right to Enact Legislation Restricting Gambling in Grain Futures Is Within the Police Power of the State of Missouri.

*House* v. *Mayes*, 219 U. S. 270, 55 L. Ed. 213.

*C. B. & Q. Ry. Co.* v. *Illinois*, 200 U. S. 561, 50 L. Ed. 596.

*Booth* v. *Illinois*, 184 U. S. 425, 46 L. Ed. 623.

B. The Missouri Bucket Shop Law Does Not Affect Interstate Commerce But Affects Only Acts Committed in Missouri, Which the Federal Grain Futures Act Does Not and Cannot Regulate.

*State* v. *Christopher*, 318 Mo. 225, 2 S. W. (2d) 621, *supra*.

*C. A. King & Co.* v. *Horton*, 156 N. E. 124 (Ohio).

*Ware and Leland* v. *Mobile County*, 209 U. S. 405.

*Hill* v. *Wallace*, 259 U. S. 44.

*Fenner* v. *Boykin*, 3 Fed. (2d) 674, Aff. 271 U. S. 240.

IV.

**The findings of fact of the trial court numbered ten and eleven that the transactions between petitioners and respondent were fictitious transactions and that respondent bet with petitioners in those transactions, had the same effect as a verdict of the jury, and the Circuit Court of Appeals for the Eighth Circuit had no right to set its findings aside under the evidence in this record.**

*Fenner* v. *Boykin*, 3 Fed. (2d) 674, Aff. 271 U. S. 240.

*Irwin* v. *Williar*, 110 U. S. 499, 28 L. Ed. 225.

*State* v. *Christopher*, 318 Mo. 225, 2 S. W. (2d) 621.

*Riordon* v. *McCabe*, 173 N. E. 661 (Ill.).

*McDaniel* v. *Tullis Craig Co.*, (Texas) 11 S. W. (2d) 205.

V.

**Respondent's reply below to petitioners' answer pleaded that the transactions upon which the right of recovery was based occurred on the Chicago and Minneapolis Boards of Trade in pursuance of, and in compliance with, the Federal Grain Futures Act. Respondent's evidence failed to make good its reply and the trial court properly found for petitioners upon the defense pleaded in their answer, even if the Grain Futures Act superseded the Missouri Bucket Shop Law with respect to interstate transactions.**

Grain Futures Act, Secs. 6 & 7, Title 7, U. S. C. Ann. p. 10.

## ARGUMENT.

### I.

**The transactions shown in evidence are illegal and void under the Missouri Bucket Shop Law** (R. S. Mo. 1929, Secs. 4316 to 4326, inclusive, all of which are set out in the appendix to the petition for certiorari herein).

By the terms of Section 4317, R. S. Mo., 1929—

> "A bucket shop * * * is a place wherein the person carrying on the bucket shop, then and there, either as principal or agent, pretends to buy or sell, or goes through the form of buying and selling, to or for any other person or persons * * * grain, provisions and other commodities * * * at prices fixed or pretended to be fixed by trades or transactions made or offered to be made in same on boards of exchange or otherwise, but wherein there is in fact no actual purchase and sale, or sale and purchase of such commodity for or on account of the party or parties thereto."

The learned trial judge expressly found that the transactions here were "fictitious transactions." "None of them were actually executed between clearing members of the exchange where pretended to have been consummated."

And further found:

> "In all of the transactions plaintiff bet with its customers and took the other side of the deal" (Findings of Fact Nos. 10 and 11, R. 188).

The record amply sustains the trial court's finding.

In *State* v. *Kentner*, 178 Mo. 487, 77 S. W. 522, the defendant had an office in St. Joseph, Missouri, and a branch in Mound City in charge of an agent who there took orders for the purchase or sale of stocks and grain which were transmitted to the office at St. Joseph. These orders were protected by margins. At the Mound City office there was a blackboard on which prices were marked on the direction of the defendant by telephone from St. Joseph. Defendant also employed a solicitor to solicit business at Mound City. The court found that the transactions were fictitious and that the profits or losses were determined by the rise and fall in the market. The court held that the business was in violation of the Missouri Bucket Shop Law and that the pretended purchases were made at the defendant's place of business in Mound City, and therefore, that the violation of the statute occurred there.

In *State* v. *Christopher*, 318 Mo. 225, 2 S. W. (2d) 621, the facts were almost exactly like the facts in the present case. The action was a prosecution under the Missouri Bucket Shop Law. The case was submitted on an agreed statement of facts and so strikingly similar are they to the facts in the case at bar that we state in substance what they were, as follows:

That the defendant was a member of the boards of trade in Kansas City and Chicago and that such boards of trade were contract markets under the Federal Act.

That the defendant was engaged in the business of buying and selling grain on commissions for numerous customers for future delivery.

That the defendant maintained an office in Sedalia, Missouri, in charge of an agent; that defendant furnished market quotations for his Sedalia office over the telegraph wire from Kansas City, which as in this case were placed on the blackboard in the office.

That defendant's agent received orders for the purchase of grain to be executed on the Kansas City or Chicago Boards of Trade as directed by the customer.

That the agent transmitted such orders to Kansas City for acceptance.

That such orders if accepted were executed on the Kansas City Board of Trade or transmitted by wire for execution on the Chicago Board of Trade, the bulk of the business being done on the Chicago Board of Trade.

That after the execution of the trade the customer would be duly notified within a few days by mail of the trade, this being sent from defendant's Kansas City office. The transactions as in this case were all designated by number.

In short, Christopher had at Sedalia the same equipment that the respondent in this case had at Carrollton, and the dealing was done in the same way.

Practically all of the transactions were conducted on margin.

It was admitted that a large majority of the persons engaged in these trades were not engaged in the grain business, but were in the transactions for the purpose of speculative gain.

It was further admitted that there was no physical delivery of the grain, but all the trades were offset by subsequent sales or subsequent purchases, the same as plaintiff claims was done in this case.

It was further admitted that all orders received at Sedalia were actually executed by the defendant upon the exchange subject to the rules of the exchange. So claims the respondent in this case.

The orders which the court said were actually executed on the exchange subject to the rules of the exchange were confirmed by notice sent out from the Kansas City office; that notice of confirmation was exactly like the notice which was sent out to the customers in the case at bar.

The only element present in this case which was not expressly shown to be present in the Christopher case was testimony establishing an actual intention of the parties from the inception of the transactions not to make delivery of any of the grain purchased or purported to be purchased. The court in the Christopher case, however, inferred such an intent from the regular course of business in defendant's office and from the fact that none of the persons trading in defendant's office ordered or accepted delivery of the grain. From this custom it was found that the defendant had reason to believe that such was the intent of the customers. The court held that the

foregoing facts constituted a violation of the Missouri Bucket Shop Law under the previous ruling of the court in *State* v. *Kentner, supra,* which the court described as "a case exactly like the present one." In fact the defendant in the Christopher case conceded that the course of business pursued constituted a violation of the Missouri Bucket Shop Law, unless that law with respect to the transactions there shown was annulled or superseded by the said Grain Futures Act. This phase of the case we shall discuss later.

*Smith* v. *Bailey,* 200 Mo. App. 627, 209 S. W. 945, holds that the intent of either of the parties to the buying and selling of commodities for future delivery to speculate on the rise and fall of the market is sufficient to render and does render contracts therefor absolutely void under the Missouri Bucket Shop Law, even to the point that the broker who is ignorant of the intention of his principal to gamble cannot collect his broker's commission for his part in the speculation. The court said at page 635:

> "However, it was not necessary for plaintiffs to have known of defendant's intention to gamble in order that the demand sued for be not recoverable. The contracts, as we have already stated, were void, although it may have been the intention of only one of the parties to the contract to gamble. It is held that such contracts are void in the hands of a person who is a party to them even though he acted in ignorance of the

fact that the delivery of the commodity purchased or sold was not intended."

See also:

*Elmore-Schultz Grain Co.* v. *Stonebraker,* 202 Mo. App. 81, 214 S. W. 216.

*Stewart* v. *Hutchinson,* 120 Mo. App. 32, l. c. 36, 96 S. W. 253.

*Connor* v. *Black,* 119 Mo. 126, l. c. 141, 24 S. W. 184.

*Atwater* v. *Brokerage Co.,* 147 Mo. App. 436, 126 S. W. 823.

*Woolfolk* v. *Duncan,* 80 Mo. App. 421.

*McVean* v. *Wehmeier,* 215 Mo. App. 587, 256 S. W. 1085.

The Missouri Bucket Shop Law provides (Section 4325, R. S. Mo. 1929), and the foregoing cases plainly hold that even though but one party to the transaction intends to speculate on the rise and fall of the market, nevertheless that intent infects the entire transaction and renders the contract void both as to the broker and as to the customer.

All of the transactions between these petitioners and respondent occurred in Missouri, whatever respondent may or may not have done after it received petitioners' orders for the purported sale and purchase of grain. Consequently, under the express terms of the law the violation of the law occurred in Missouri. The offense of maintaining a bucket shop within the meaning of Sections 4316 and 4317, R. S. Mo. 1929, necessarily occurred in Carrollton, Missouri.

Moreover, Section 4318, R. S. Mo. 1929, reads:

> "All pretended purchases and sales or contracts and agreements for the pretended purchase and sale of the commodities, aforesaid, in manner aforesaid, wherein there is, in fact, no actual purchase and sale or sale and purchase of such commodities for or on account of the party or parties thereto, are hereby declared gambling and criminal acts, whether the order or contract for the pretended purchase or sale of such property purports to be offered, accepted, executed or consummated in this state or in any other state or country: *Provided*, the offer to make such pretended purchase or sale of said property is placed or given or communicated from this state; and any person violating the provisions of this section shall be guilty of a felony (R. S. 1919, Sec. 3566)."

Under this section all that is necessary to brand the transaction as a gambling and criminal act is that the offer to make a pretended sale or purchase be given or communicated from this state. Here it is admitted by both parties that the offer to make the pretended purchases and pretended sales involved in this case were all made at Carrollton, Missouri.

Consequently, the transactions shown in evidence were void—first, because they arose from the keeping and operating of a bucket shop in Carrollton within the meaning of the statute, and second, because the transactions were gambling transactions within the terms of the Bucket Shop Law without regard to whether or not orders were transmitted by respondent to contract markets beyond the state.

II.

**The transactions shown in evidence are illegal and void at common law irrespective of the Missouri Bucket Shop Law.**

In *Irwin* v. *Williar,* 110 U. S. 499, 28 L. Ed. 225, this court stated the rule constituting the test whether a purchase or sale for future delivery is a gambling transaction as follows, l. c. 508:

> "The generally accepted doctrine in this country is, as stated by Mr. Benjamin, that a contract for the sale of goods to be delivered at a future day is valid, even though the seller has not the goods, nor any other means of getting them than to go into the market and buy them; but such a contract is only valid when the parties really intend and agree that the goods are to be delivered by the seller and the price to be paid by the buyer; and, if under guise of such a contract, the real intent be merely to speculate in the rise or fall of prices, and the goods are not to be delivered, but one party is to pay to the other the difference between the contract price and the market price of the goods at the date fixed for executing the contract, then the whole transaction constitutes nothing more than a wager, and is null and void. And this is now the law in England by force of the statute of 8 & 9 Vict., c. 109, s. 18, altering the common law in that respect. Benjamin on Sales, Secs. 541, 542, and notes to 4th Am. Ed. by Bennett."

The court also in that case approved the portion of the charge of the trial court to the jury reading as follows, l. c. 508:

> "If, however, at the time of entering into a contract for a sale of personal property for future

> delivery it be contemplated by both parties that at the time fixed for delivery the purchaser shall merely receive or pay the difference between the contract and the market price, the transaction is a wager, and nothing more. It makes no difference that a bet or wager is made to assume the form of a contract. Gambling is none the less such because it is carried on in the form or guise of legitimate trade."

In *Embry* v. *Jemison*, 131 U. S. 336, 33 L. Ed. 172, the action was upon certain notes given to secure balances due a broker. The defendant filed a plea of *nil debet* and also filed a special plea of wager setting up that he had contracted with the brokerage firm, of which the plaintiff was a partner, to purchase cotton for him on a margin; that the notes were given to plaintiff to secure this margin account and that the purchase or delivery of actual cotton was never contemplated either by plaintiff or defendant—

> "And it was understood between them that the settlement was to be made between said parties by one party paying to the other the difference between the contract price and the market price of said cotton futures, according to the fluctuations in the market;
>
> And, therefore, the defendant says that the said contract was a wagering contract and that it and the said four notes for the consideration aforesaid are void and of no force in law" (l. c. 338).

A demurrer was sustained to this plea below and the case was tried on the plea of *nil debet*. A verdict and judgment was given for plaintiff and on writ of error this court held that the court below erred in sustain-

ing the demurrer to defendant's special plea of wager and said l. c. 349:

> "We are of the opinion that the special plea of wager presented a good defense to the action and ought not to have been rejected."

The court further held that the fact that defendant had executed notes gave plaintiff no greater right of recovery than he would have had had no notes been given. The court relied on and quoted from *Irwin* v. *Williar, supra,* and *Roundtree* v. *Smith,* 108 U. S. 269.

The question was raised whether the transaction was illegal under the New York statute or the Virginia statute relating to gambling and wagering contracts. The court held that it was immaterial which law governed because the defense pleaded was good under the law of either state. The court said at page 344:

> "If this be not a wagering contract, under the guise of a contract of sale, it would be difficult to imagine one that would be of that character. The mere form of the transaction is of little consequence. If it were, the statute against wagers could easily be evaded. The essential inquiry in every case is as to the necessary effect of the contract and the real intention of the parties."

And further quoted from Benjamin on Sales to the same effect as the statement of this court in *Irwin* v. *Williar, supra.*

*Clews* v. *Jamieson,* 182 U. S. 461, 45 L. Ed. 1183, announces the same principle as *Irwin* v. *Williar, supra,* and *Embry* v. *Jemison, supra,* but the court

there found the plaintiff was entitled to recover because the defendant had not sustained the burden of proving that no actual delivery of the commodities purchased was contemplated by the parties. For additional cases defining a wagering contract,

See:

*Gettys* v. *Newberger,* 272 Fed. 209, (C. C. A. 8th), l. c. 217.
*James* v. *Clement,* 223 Fed. 385 (C. C. A. 5th).
*Riordon* v. *McCabe,* 173 N. E. 660, (Ill.).
*Fenner* v. *Boykin,* 3 Fed. (2d) 674, l. c. 684 (D. C. N. D. Ga.), Aff. 271 U. S. 240.

The evidence shows that respondent knew that in the approximately eight months these alleged transactions were being carried on, out of the millions of bushels of grain pretended to be dealt in, not a single bushel was delivered nor was delivery requested by either party, and, in addition, all of the petitioners testified that delivery never was intended by either party. They testified that they expressly told respondent that they would not and could not accept delivery; that they were financially unable to pay for the grain which they purported to buy or to deliver the grain which they purported to sell, and that McDonough expressly assured them that they would not have to accept delivery of any of the grain they dealt in (R. 154-158). McDonough's knowledge of the intent of these customers, McDonough's close contact with these customers, and his advice to them clearly showed that he knew what was in their minds; that he knew they were dealing in the fluctuations of the

markets without any intention of making or accepting delivery. His knowledge was the knowledge of respondent (see *James* v. *Clement,* 223 Fed. 385, l. c. 395; *Wright-Blodgett Company* v. *United States,* 236 U. S. 397). That respondent knew that petitioners as well as its other customers at Carrollton were gambling and speculating on the rise and fall of grain and that respondent itself took the other side of the deal as found by the trial court is forcibly shown by the letters it wrote to its customer, R. A. Thompson, which we here reproduce from the transcript (R. 153). The letter to Mr. Thompson is as follows:

> "We had a conversation this morning with Mr. McDonough and we believe that the proper thing to do is gradually reduce this Winnipeg November-Chicago December spread, and unless we hear from you to the contrary, we will reduce yours gradually, and do the very best we can for you.
>
> We are certainly awfully sorry that we got off so badly on this spread, and it is really the first bad one we have had since we have been in business.
>
> I still think that there is a good chance for improvement, and this spread only worked this way on account of manipulation in Winnipeg. But it is dangerous to wait until the last day, so for this reason, we recommend that you reduce it gradually.
>
> Therefore, as stated above, we shall handle this for you the best we can, unless we hear from you to the contrary, and Mr. McDonough will keep you fully posted."

And the letter also addressed to petitioner, I. N. Calvert, which is as follows (R. 153):

"Mr. I. N. Calvert, Carrollton, Missouri.

Dear Sir:

Hereto attached please find statement of your account which explains itself. We are, of course, awfully sorry that this Winnipeg spread turned out so badly but assure you that we have given you at all times the very best advice we had. Would appreciate it if you would mail us a check upon receipt of this letter for this amount or if you cannot pay it all at once, write us how you can pay us and you will find us very reasonable about it.

In other words, we want to continue to do business with you and we feel sure that we can help you make it back. If you want to make arrangements with us to pay a certain amount each month we shall be glad to handle the account in this manner for you provided you make a part payment upon receipt of this letter.

Respectfully yours,

Uhlmann Grain Company,
By Paul Uhlmann."

The advice given in these letters shows respondent's knowledge of the character of the deals. Not only that but it shows that respondent had full notice and knowledge that no delivery was intended and most certainly shows the financial inability of these parties to carry on such enormous transactions as respondent was carrying on with its Carrollton customers.

What evidence is sufficient to impart notice to a broker that his customers are engaging merely in wagering transactions is indicated in the opinion of the court in *James* v. *Clement,* 223 Fed. 385, l. c. 397, where the following quotation from *Williamson* v. *Majors,* 169 Fed. 754, l. c. 762, is adopted and approved:

> "From what has been recited, it is clear that, in his buying and selling cotton futures, Williamson, who was in the real estate business and not in the cotton business, had no intention to actually buy or sell cotton, but was merely speculating on the rise and fall of the cotton market, intending to settle by receiving or paying differences, in fact, gambling in cotton futures, and it seems clear that Bettis Majors knew all about it. Certainly, from a mere inspection of Williamson's orders, he ought to have known it. Under the evidence, to assume his ignorance of Williamson's gambling would be a reflection on his intelligence. Knowing the nature of Williamson's dealings in cotton futures, he facilitated, if not encouraged him, furnished credit and money to carry on the same, and, finally, took the transactions off his hands by 'closing out' as to Williamson and 'taking them over' to himself."

On the general principle that such transactions are gambling transactions and void at common law, see *McDaniel* v. *Tullis Craig Company,* 11 S. W. (2d) 203 (Texas). This was a suit to recover on two notes, one for $7,250.00 and the other for $3,500.00. The $3,500.00 note was given for advances made in cotton deals, that is, dealing in cotton futures. A large amount of cotton was dealt in. Not a single bale was

delivered. The decision was by the Court of Civil Appeals of the State of Texas. In deciding the case the court commented on this failure to deliver as follows, l. c. 205:

> "It is significant that out of that vast number of customers or 'traders' as they were diplomatically called, not one of them ever wanted or asked for the cotton he had bought. The reason is apparent, no one had imagined for a moment that the cotton being dealt with had any existence so far as the parties were concerned. It was evidently not a sale of cotton, but a wager that cotton would rise or fall in price. Of course, there was no express agreement, orally or in writing, that no cotton was to be delivered, no more than there is an agreement that the game is one of chance when money is put into a roulette wheel. It did not require a positive agreement that no cotton should be handled—no one was so simple or uninformed as to require such an agreement. Doubtless if the cotton had been demanded by a customer it would have been delivered, as a matter of self-defense but the brokers were comfortable in the assurance that no such demand would ever be made. It was never dreamed by anyone that actual delivery was ever contemplated and no one, broker or trader, ever so understood it. It is held in the case of *Clews* v. *Jamieson*, 182 U. S. 461, 21 S. Ct. 845, 45 L. Ed. 1183:
>
> 'In order to invalidate a contract as a wagering one, both parties must intend that instead of delivery of the article there shall be a mere payment of the difference between the contract and the market price.' "

All of the facts in this case tend to show that such intention existed in the minds of all the parties to the transactions here.

Then after reciting the rule announced in the case of *Seeligson* v. *Lewis,* 65 Texas 215, and approved by the Supreme Court of the United States in *Irwin* v. *Williar,* 110 U. S. 499, to the effect that a contract is only valid when the parties really intend and agree that the goods are to be delivered by the seller and the price to be paid by the buyer, and that if under the guise of such a contract the real intention is merely to speculate on the rise and fall of the prices, then the contract is invalid, the court said:

> "The facts bring this case clearly within the transaction described in the cited cases, which will invalidate any contract made under the terms described. The cases are all in full accord on the subject. *Embrey* v. *Jemison,* 131 U. S. 336, S. Ct. 776, 33 L. Ed. 172; *Floyd* v. *Patterson,* 72 Tex. 202, 10 S. W. 526, 13 Am. St. Rep. 787; *Oliphant* v. *Markham,* 79 Texas 543, 15 S. W. 569, 23 Am. St. Rep. 363; *Logan* v. *Norris,* 100 Tex. 228, 97 S. W. 820; *Lovejoy* v. *Kaufman,* 16 Tex. Civ. App. 577, 41 S. W. 507; *Kenedy Mercantile Co.* v. *Ainsworth,* (Tex. Civ. App.) 258 S. W. 205. No attention seemed to have been paid to the financial ability of customers to pay for cotton whose values ran into thousands of dollars, but anyone was accepted as a customer who could deposit a margin."

The last part of the above quoted paragraph exactly fits the facts in this case because in this case, as in that, no, or very little, attention was paid to the

financial condition of respondent's Carrollton customers.

On the question whether the form of the contract is conclusive and binding as evidencing a valid and legal contract, that court in harmony with the decision of the Missouri Supreme Court in the case of *State* v. *Christopher,* heretofore cited, said:

> "As said by this court in Kenedy Mercantile Co. vs. Ainsworth, herein cited: 'The form of the contract cannot be conclusive as to the true character of the transaction, and need not be given great importance. If it can be deduced from the affair, no matter how ingeniously * * * concealed under the guise and mask of an innocent contract, that an illegal agreement was being covered up, the contract should be declared illegal and void.'"

The common law rule respecting wagers in stocks and grain is also stated in these Missouri cases: *McVean* v. *Wehmeier,* 256 S. W. 1085 (Mo. App.) l. c. 1087, and *Edwards Brokerage Co.* v. *Stevenson,* 160 Mo. 516, 61 S. W. 617. *Elmore-Schultz Grain Company* v. *Stonebraker,* 202 Mo. App. 81, 214 S. W. 216.

It is respectfully submitted that under the undisputed testimony in the record and the very nature of the dealings between these parties the authorities above cited brand the transactions shown by this record as wagering and gambling transactions, and render them void and unenforcible between these parties.

## III.

**The Federal Grain Futures Act does not supersede the Missouri Bucket Shop Law or legalize wagering transactions which were theretofore illegal at common law.**

A. The Right to Enact Legislation Restricting Gambling in Grain Futures Is Within the Police Power of the State of Missouri.

Congress by the enactment of the Grain Futures Act did not take from the states their police power to adopt such legislation as would promote the public convenience, general prosperity, and public morals, which had theretofore existed.

*House* v. *Mayes*, 219 U. S. 270, 55 L. Ed. 213.
*C. B. & Q. Ry. Co.* v. *Illinois*, 200 U. S. 561, 50 L. Ed. 596.
*Booth* v. *Illinois*, 184 U. S. 425, 46 L. Ed. 623.

B. The Missouri Bucket Shop Law Does Not Affect Interstate Commerce But Affects Only Acts Committed in Missouri, Which the Federal Grain Futures Act Does Not and Cannot Regulate.

The Missouri Bucket Shop Law has been interpreted by the Missouri Supreme Court in *State* v. *Christopher*, 318 Mo. 225, 2 S. W. (2d) 621 (*supra*). The court, in pointing out that there was no conflict between the purpose and scope of the Missouri Bucket Shop Law and the Federal Grain Futures Act said, page 629 of 2 S. W. (2d):

> "The transactions permitted at defendant's place, described in the stipulation, have nothing

to do with interstate commerce. Nothing is said about the shipment across the state line of any grain, the subject of the so-called purchases. The only feature of any of those transactions which comes within the control of Congress is the 'confirmation' of a purchase sent 'by mail' from Kansas City to Sedalia. It may be argued that such confirmations by mail are forbidden by the act. But the Missouri statute does not declare such a confirmation unlawful, nor attempt to deal with it at all. *The statute forbids the keeping of a place where deals, thus later confirmed, were entered into in the first place.* A state law may prohibit the printing and sale of obscene literature. That does not interfere or conflict with the act of Congress forbidding the transmission of such literature through the mails. The production of the objectionable matter is one act, of which the state has control. The transportation through the mails is another act under the jurisdiction of Congress. So here, the bogus sale of grain at Sedalia is not forbidden by the act, which could apply only to the confirmation of it by mail. Such confirmation by messenger or by telephone or telegraph could not be covered by the act. * * * Further, in order to sustain the position of defendant we must hold that whatever trading the act has not forbidden it has made lawful, whether such trading occurs on a contract market or elsewhere, whether it affects interstate commerce or not. For counsel present this bald argument: 'In effect, the Missouri statute prohibits future trading as it is now carried on pursuant to the authorization of the Secretary of Agriculture. This presents the question whether Missouri may prohibit what the Secretary of Agriculture may authorize.' That is, Missouri cannot prevent grain gambling in Sedalia because the Secretary of Agriculture has designated a place in Kansas City where it is forbidden. Mis-

souri is powerless to prevent bucket shop gambling anywhere within its borders, and that kind of trading, everywhere recognized as evil in its effects, can flourish unmolested over the state because Congress regulates it in Kansas City and has not seen fit to forbid it elsewhere. * * * The authority of the state under its police power to enact and enforce regulations which it deems necessary for the welfare of its citizens, even though such regulations incidentally affect interstate commerce, unless direct specific legislation of Congress covers the exact subject, is recognized by the United States Supreme Court. *Mo. Pac. R. Co.* v. *Larabee Mills*, 211 U. S. loc. cit. 623, 29 S. Ct. 214, 53 L. Ed. 352; *Southern R. Co. Co.* v. *Reid*, 222 U. S. 437, 32 S. Ct. 140, 56 L. Ed. 257; *M. K. & T. R. Co.* v. *Harris*, 234 U. S. loc. cit. 417, 34 S. Ct. 790, 58 L. Ed. 1377, L. R. A. 1915E, 942. Such as punishment by a state for forgery of a promissory note payable to a national bank. *Cross* v. *North Carolina*, 132 U. S. loc. cit. 139, 10 S. Ct. 47, 33 L. Ed. 287" (italics ours).

In *C. A. King & Company* v. *Horton*, 156 N. E. 124 (Ohio), the facts were that C. A. King & Company did a brokerage business at Bryan in the State of Ohio having its principal office at Toledo. The suit was to recover on notes which Horton had given King & Company in connection with grain transactions in which King & Company acted as broker. The dealing was marginal dealing in the sale and purchase of grain on the Toledo and other exchanges. Horton was to keep on deposit a margin of 10¢ per bushel on all grain bought or sold, except when defendant had an equal amount bought or sold then the amount of the deposit was to be 2½¢ per bushel. As com-

pensation for its service King & Company was to have 1/8 of 1¢ per bushel. King & Company reserved the right whenever margins were running out, without notice, to close the transactions.

The judgment rendered by the trial court was appealed to the Supreme Court of Ohio. One of the contentions was that the Bucket Shop and Anti-Grain Gambling Laws of Ohio did not apply because of the Grain Futures Act. In a lengthy and elaborate discussion the Supreme Court of Ohio held that the Grain Futures Act in no sense and in no way whatever repealed, annulled, or destroyed the Bucket Shop Laws of Ohio or those laws of that state which prohibited gambling in grain.

After this case was affirmed by the Supreme Court of Ohio a writ of error was sought from this court. This was denied on the ground that "the only federal questions presented are frivolous" (see 48 Sup. Ct. Rep. 322).

On the question whether the transactions in *King* v. *Horton,* constituted interstate commerce, the Ohio court said, page 128:

> "In logical sequence we should next inquire whether these transactions were in interstate commerce.
>
> "Much of the grain grown in this country is moved in interstate commerce, and it is not material to inquire what proportion is so moved, or what amount is held in storage in the so-called contract markets. It is quite certain that an enormous volume of grain is consumed within the state where it is grown. Intrastate transac-

> tions in grain which is never transported across state lines is no part of interstate commerce, and such transactions cannot be lawfully defined as interstate commerce by congressional fiat. The broad declarations of Section 3 of the Grain Futures Act (Section 5668c, Barnes' Fed. Code, U. S. Comp. St. 8747 4/5b) are purely political and in no sense legislative. Those declarations add nothing to the act except in so far as the act commands greater respect, because they indicate that Congress has made a thorough investigation of the subject. It must, however, still be accepted as axiomatic that whatever 'national public interest' attaches to transactions known as 'futures' rests wholly upon fact, and to no extent upon congressional fiat. Transactions relating to future delivery of grain, in which the parties clearly do not intend delivery, and where possible delivery as a last resort would involve only a transfer of a warehouse certificate, would seem to be so far removed from any just notions of interstate commerce that no citation of authorities should be necessary, and yet we are not without authorities."

This precise question was before this court in the case of *Ware and Leland* v. *Mobile County*, 209 U. S. 405. There the State of Alabama passed a law providing that every person engaged in buying and selling stocks for speculation or on commission for themselves or others, and each place of business known as a cotton exchange or stock exchange or bucket shop, should pay a license tax of $500.00 in any town over 20,000 inhabitants and in other towns $250.00. The tax was resisted by Ware and Leland, cotton brokers maintaining an office in Mobile and offices in New York, New Orleans and Chicago. They

were engaged at Mobile in buying and selling cotton for future delivery on commission. It was not usual in their business when futures were bought or sold to discuss the subject of delivery. The transactions described there resembled in a general way the transactions in evidence here. This court, by Mr. Justice Day, said, page 409:

> "The sole question here presented is, whether the statute in question is an attempt to regulate interstate commerce, for if the plaintiffs in error are shown by the foregoing agreed facts to be engaged in interstate commerce then the statute is void, as an attempt by a State to regulate the commerce which the Constitution of the United States places within the exclusive control of Federal authority."

This court, after discussing the pertinent authorities, said, page 412:

> "The appellants are brokers who take orders and transmit them to other States for the purchase and sale of grain or cotton upon speculation. They are, in no just sense, common carriers of messages, as are the telegraph companies. For that part of the transactions, merely speculative and followed by no actual delivery, it cannot be fairly contended that such contracts are the subject of interstate commerce; and concerning such of the contracts for purchases for future delivery, as result in actual delivery of the grain or cotton, the stipulated facts show that when the orders transmitted are received in the foreign State the property is bought in that State and there held for

the purchaser. The transaction was thus closed by a contract completed and executed in the foreign State, although the orders were received from another State. When the delivery was upon a contract of sale made by the broker, the seller was at liberty to acquire the cotton in the market where the delivery was required or elsewhere. He did not contract to ship it from one State to the place of delivery in another State. And though it is stipulated that shipments were made from Alabama to the foreign State in some instances, that was not because of any contractual obligation so to do. In neither class of contracts, for sale or purchase, was there necessarily any movement of commodities in interstate traffic, because of the contracts made by the brokers.

"These contracts are not, therefore, the subjects of interstate commerce, any more than in the insurance cases, where the policies are ordered and delivered in another State than that of the residence and office of the company. The delivery, when one was made, was not because of any contract obliging an interstate shipment, and the fact that the purchaser might thereafter transmit the subject-matter of purchase by means of interstate carriage did not make the contracts as made and executed the subjects of interstate commerce."

Thus even if it had been shown in the present case that the parties in some instances contemplated the actual purchase and the actual delivery of grain as a result of the transactions shown in evidence, still under *Ware and Leland* v. *Mobile County, supra,* the transactions would not have constituted interstate

commerce. How much less are they so where it is shown that in no instance did the parties contemplate an actual delivery of the grain and in no instance was grain actually delivered.

In *Hill* v. *Wallace*, 259 U. S. 44, the validity of the Future Trading Act passed by Congress was attacked. The Act imposed a tax of 20¢ a bushel upon all contracts for the sale of grain for future delivery, except sales on Boards of Trade designated as contract markets by the Secretary of Agriculture. The grounds of attack material here were: first, that the Act violated the Tenth Amendment to the Constitution by interfering with the right of the State of Illinois to regulate the maintenance of grain exchanges within its borders; and second, that the Act was an attempt to regulate commerce which was intrastate, not interstate. This court held the Act in part to be invalid under the Tenth Amendment because it was an attempt, under the guise of a tax, to compel Boards of Trade to comply with regulations, many of which had no relevancy to the collection of the tax. The court further held that there was nothing in the Act to limit its application to interstate commerce and that under the authority of *Ware and Leland* v. *Mobile County, supra,* (l. c. 69), "It follows that sales for future delivery on the board of trade are not in and of themselves interstate commerce. They cannot come within the regulatory power of Congress as such, unless they are regarded by Congress, from the evidence before it, as directly interfering with interstate

commerce so as to be an obstruction or a burden thereon."

We believe this issue is concluded by the ruling of the District Court for the Northern District of Georgia in the case of *Fenner, et al.* v. *Boykin,* 3 Fed. (2d) 674, three judges sitting, which was affirmed by this court in 271 U. S. 240. The facts and the opinion below are discussed briefly on page 19 of our supporting brief on this petition for a writ of certiorari. The court below in that case expressly held that the transactions there involved, which were almost precisely similar to those shown by the evidence here, were gambling transactions and that if they were interstate transactions they constituted not interstate commerce but interstate gambling, so that they were not subject to any limitation imposed by the Federal Grain Futures Act but were freely subject to the regulatory provisions of the Georgia Law, which closely resemble those of the Missouri law in the respects here in question.

If we have read the foregoing authorities aright, then it is plain that with respect to the transactions here shown in evidence the Missouri statute is fully enforcible, and that contrary to the ruling of the Circuit Court of Appeals for the Eighth Circuit in this case, the Grain Futures Act does not in any sense supersede or lessen the effect of the applicable provisions of the Missouri Bucket Shop Law. It necessarily follows that the Circuit Court of Appeals for the Eighth Circuit erred in its conclusion upon the merits and erred in reversing the judgment and finding below.

IV.

**The findings of facts of the trial court numbered ten and eleven that the transactions between petitioners and respondent were fictitious transactions and that respondent bet with petitioners in those transactions, had the same effect as a verdict of the jury, and the Circuit Court of Appeals for the Eighth Circuit had no right to set its findings aside under the evidence in this record.**

The alleged sale confirmations were not binding on the trial court. Neither was the spoken testimony of respondent's witnesses. It was the province of the trial court to weigh the evidence from all angles; to take into consideration all of the circumstances detailed in evidence, such as the financial ability of petitioners to meet the obligations they purported to incur, their ability or inability to receive, store and care for the large volume of grain which they purported to purchase, the nature of their occupations, the large amount of grain, the activity of respondent's agent, Mr. McDonough, in soliciting accounts from all classes of citizens regardless of their financial ability to make their obligations good, and the very nature of the dealings in all of their phases.

*Fenner* v. *Boykin*, 3 Fed. (2d) 674; Aff. 271 U. S. 240.

*Irwin* v. *Williar*, 110 U. S. 499, 28 L. Ed. 225.

*State* v. *Christopher*, 318 Mo. 225, 2 S. W. (2d) 621.

*Riordon* v. *McCabe*, 173 N. E. 660 (Ill.).

*McDaniel* v. *Tullis Craig Co.*, 11 S. W. (2d) 205 (Texas).

V.

**Respondent's reply below to petitioners' answer pleaded that the transactions upon which the right of recovery was based occurred on the Chicago and Minneapolis Boards of Trade in pursuance of, and in compliance with, the Federal Grain Futures Act. Respondent's evidence failed to make good its reply and the trial court properly found for petitioners upon the defense pleaded in their answer, even if the Grain Futures Act superseded the Missouri Bucket Show Law with respect to interstate transactions.**

Respondent's evidence was that part of the transactions in grain purported to be executed on the Chicago Board of Trade, part of the Minneapolis Board of Trade, part on the Winnipeg Grain Exchange, and a considerable part in "spreads" between the Chicago and Winnipeg exchanges (R. 58, 69, 72, 154, 161, 164). The Winnipeg Grain Exchange is, of course, not a contract market designated by the Secretary of Agriculture within the provision of the Grain Futures Act in Sections 6 and 7, Title 7, U. S. C. Ann., page 10 (R. 72). It cannot be questioned that under Sections 6 and 7 trading such as respondent claims it carried on with petitioners is unlawful unless it is conducted on a contract market designated by the Secretary of Agriculture. Consequently, even under the Grain Futures Act those transactions which were claimed to have been carried on upon the Winnipeg Grain Exchange were necessarily unlawful.

Respondent did not, however, segregate or attempt to segregate its alleged Winnipeg transactions from

those it claimed were carried on at Minneapolis and Chicago. Under its reply, the burden was on it to do so. All of the transactions are, in the testimony, dealt with and treated upon the same basis. Hence if some are illegal, all are illegal.

Moreover, even those transactions which respondent's reply below alleged were consummated on the Chicago and Minneapolis Boards of Trade, are not shown to have been consummated in the manner required by the Grain Futures Act, Section 6, Chapter I, Title 7, U. S. Code Ann., page 9, which reads as follows:

> "6. *Prohibition against dealings in grain futures; general exceptions.* It shall be unlawful for any person to deliver for transmission through the mails or in interstate commerce by telegraph, telephone, wireless, or other means of communication any offer to make or execute, or any confirmation of the execution of, or any quotation or report of the price of, any contract of sale of grain for future delivery on or subject to the rules of any board of trade in the United States, or for any person to make or execute such contract of sale, which is or may be used for (a) hedging any transaction in interstate commerce in grain or the products or by-products thereof, or (b) determining the price basis of any such transaction in interstate commerce, or (c) delivering grain sold, shipped, or received in interstate commerce for the fulfillment thereof, except—
>
> (a) Where the seller is at the time of the making of such contract the owner of the actual physical property covered thereby, or is the grower thereof, or in case either party to the contract is the owner or renter of land on which the same is

to be grown, or is an association of such owners, or growers of grain, or of such owners or renters of land; or

(b) Where such contract is made by or through a member of a board of trade which has been designated by the Secretary of Agriculture as a 'contract market,' as hereinafter provided in this chapter, and if such contract is evidenced by a record in writing which shows the date, the parties to such contract and their addresses, the property covered and its price, and the terms of delivery: Provided, That each board member shall keep such record for a period of three years from the date thereof, or for a longer period if the Secretary of Agriculture shall so direct, which record shall at all times be open to the inspection of any representative of the United States Department of Agriculture or the United States Department of Justice (Sept. 21, 1922, c. 369, Sec. 4, 42 Stat. 999)."

Under this section, the transactions claimed by respondent to have occurred on the Chicago and Minneapolis Boards of Trade are only lawful where "such contract is evidenced by a record in writing which shows the date, the parties to such contract and their addresses, the property covered and its price, and the terms of delivery."

Not in a single instance did this respondent show an actual transaction involving any one of the petitioners herein on either the Minneapolis or the Chicago Boards of Trade, or for that matter on the Winnipeg Exchange. No records in writing were produced by respondent at the trial showing any such transactions

with petitioners. Nor was there a line of testimony indicating that the names of the parties to any such contracts or their addresses had been preserved or were known, much less that they were embodied in the form of a written agreement.

Consequently, it may be said categorically that respondent did not show by any testimony in the record that a single one of all of the numerous transactions in which it claimed to have bought and sold grain on behalf of these petitioners ever was consummated on any exchange in a proper and lawful manner. It necessarily follows, therefore, that whether or not the Grain Futures Act in any particular supersedes or repeals the Missouri Bucket Shop Law, and whether or not such transactions if carried on between Carrollton and the Chicago and Minneapolis Boards of Trade constitute interstate commerce, none of the transactions shown in evidence was lawfully consummated and the trial court was right in finding in favor of petitioners. This question the Circuit Court of Appeals for the Eighth Circuit did not pass upon.

## Conclusion.

It is respectfully submitted that the transactions shown in evidence in this case clearly violated the Missouri Bucket Shop Law; that they went further than that and were void as common law gambling; that the transactions rendered void by the Missouri statute were not interstate commerce; that the Missouri Bucket Shop Law is not in any sense superseded, in the respects in which it is applied in this case, by the

Federal Grain Futures Act; that the trial court was right in its finding below in favor of these petitioners and that the judgment herein of the Circuit Court of Appeals for the Eighth Circuit should be reversed.

S. J. JONES,
*Attorney for Petitioners.*

G. C. JONES,
RICHARD S. RIGHTER,
LATHROP, CRANE, REYNOLDS, SAWYER & MERSEREAU,
*Of Counsel.*

FILE COPY

FILED
JUN 17 1932
CHARLES ELMORE CROPLEY
CLERK

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1931.

No. [redacted] 63

A. P. DICKSON, JOE DICKSON, I. N. CALVERT, C. T. DICKINSON AND ERNEST MILLER, PETITIONERS,

VS.

UHLMANN GRAIN COMPANY, A CORPORATION, RESPONDENT.

## BRIEF FOR RESPONDENT OPPOSING CERTIORARI.

I. P. Ryland,
Arthur Mag,
Roy B. Thomson,
Paul R. Stinson,
Alfred M. Seddon,
*Counsel for Respondent, Uhlmann Grain Company.*

Ryland, Stinson, Mag & Thomson,
*Of Counsel.*

## INDEX

SUBJECT INDEX


Summary of the Facts ..... 1

The Factual Evidence ..... 3

Summary of the Argument ..... 12

Argument ..... 13

I. Each contract having been executed without the State of Missouri, its validity is not determinable by the Missouri law or statutes, but is determinable by the principles of the common law. Hence, the decision of the Circuit Court of Appeals does not involve a question of local law, and no decision of the Missouri courts was necessary to be applied ..... 13

II. The contracts were presumably lawful, and the burden was upon defendants to prove that they were wagering or fictitious transactions ..... 14

III. There was no substantial evidence that the transactions, or any of them, were mere fictions or wagers ..... 14

IV. Each transaction (except those executed at Winnipeg) was executed on an officially designated "contract market" in full compliance with the Grain Futures Act, and was valid under the provisions of that Federal act, which superseded all State legislation covering the same field ..... 18

TABLE OF CASES

Berry vs. Chase, 146 Fed. 625, 629, 630 ..... 13, 16
Bibb vs. Allen, 149 U. S. 481, 492 ..... 14, 16
Board of Trade of Chicago vs. Christie Grain & Stock Co., 198 U. S. 236, 248, 250 ..... 15
Board of Trade of Chicago vs. Olsen, 262 U. S. 1 ..... 20, 22
Browne vs. Thorn, 272 Fed. 950, 952 ..... 14, 15
C. A. King & Co. vs. Horton, 116 Ohio St. 205, 156 N. E. 124 ..... 25
Chamber of Commerce of Minneapolis vs. Federal Trade Commission, 13 Fed. (2d) 673, 685 ..... 22
Cleage vs. Laidley, 149 Fed. 346, 352 ..... 14, 15, 16
Clews vs. Jamieson, 182 U. S. 461, 489, 490, 491 ..... 14, 15, 16
Cunard Steam Ship Co. vs. Kelley, 126 Fed. 610, 617 ..... 17-18
Edwards Brokerage Co. vs. Stevenson, 160 Mo. 516, 528 ..... 13, 16
Fenner vs. Boykin, 3 Fed. (2d) 674, affirmed 271 U. S. 240 ..... 23-24, 25
George vs. Capital Traction Co., 295 Fed. 965, 968 ..... 18
Gettys vs. Newburger, 272 Fed. 209, 216, 218-220 ..... 14, 15, 16
Goffe & Carkener vs. Henneberger, 132 Kan. 211, 294 Pac. 672 ..... 22
Gulf, C. & S. F. R. R. Co. vs. Hefley, 158 U. S. 98 ..... 21
Hoyt vs. Wickham, 25 Fed. (2d) 777, 779 ..... 13, 16
Illinois Surety Co. vs. Standard Underground Cable Co., 238 Fed. 546, 548 ..... 17

King and Co. vs. Horton, 116 Ohio St. 205, 156 N. E. 124 ..... 25, 26

Lyons Milling Co. vs. Goffe & Carkener, 46 Fed. (2d) 241, 245 ..... 13, 14, 16, 22

Manning vs. Mutual Life Insurance Co., 100 U. S. (10 Otto) 693 ..... 17

Missouri Pacific Ry. Co. vs. Porter, 273 U. S. 341 ..... 21

Mullinix vs. Hubbard, 6 Fed. (2d) 109, 114.... 13, 14, 15

Northern Pacific Ry. Co. vs. State of Washington, 222 U. S. 370 ..... 21

Rountree vs. Smith, 108 U. S. 269 ..... 14, 16

Solomon vs. Newberger, 35 Fed. (2d) 328, 330 .... 16

Stafford vs. Wallace, 258 U. S. 495 ..... 20, 22

State of Kansas ex rel. vs. Rosenbaum Grain Co., 115 Kan. 40, 50, 226 Pac. 80 ..... 16, 22, 23

State of Missouri vs. Christopher, 318 Mo. 225, 2 S. W. (2d) 621 ..... 25

Swift & Co. vs. United States, 196 U. S. 375, 398 ..... 20, 22

Uhlmann Grain Company vs. Dickson et al., 56 Fed. (2d) 525 ..... 1

United States vs. Ross, 92 U. S. (2 Otto) 281 .... 17

U. S. Fidelity & Guaranty Co. vs. Des Moines National Bank, 145 Fed. 273, 279 ..... 17

Wilhite vs. Houston, 200 Fed. 390, 392..... 13, 14, 15, 16

TEXT BOOK CITED

27 Corpus Juris, p. 1050 ..... 13

STATUTE CITED

The Grain Futures Act, 42 Stat. 998-1003; 7 U. S. C. A., Secs. 1-17 ..... 19, 20, 22

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1931.

**No. 930.**

A. P. DICKSON, JOE DICKSON, I. N. CALVERT, C. T. DICKINSON AND ERNEST MILLER, PETITIONERS,

VS.

UHLMANN GRAIN COMPANY, A CORPORATION, RESPONDENT.

## BRIEF FOR RESPONDENT OPPOSING CERTIORARI.

### SUMMARY OF THE FACTS.

The decision sought to be reviewed is reported as *Uhlmann Grain Company* v. *Dickson et al.*, 56 Fed. (2d) 525. We refer to respondent as plaintiff and to petitioners as defendants.

The Eighth Circuit Court of Appeals held that plaintiff, a grain broker, was entitled to recover its commissions and advancements from defendants, its customers, on transactions wherein defendants, through plaintiff as their agent, purchased and sold grain for future delivery, where it appeared that the orders were given for execution and actually executed on the Grain Exchanges of Chicago, Minneapolis and Winnipeg; that each contract obligated the parties to deliver or accept the grain; that each transaction was consummated by an offsetting purchase or sale on the trading floor of the same Exchange; and that plaintiff acted only as agent for defendants. It was further held that none of such transactions was a Missouri contract, but all contracts were governed by the laws of the places where they were executed, and that the fact that defendants did not intend to make or accept an actual delivery of the grain was not sufficient to warrant a finding that the transactions were mere fictions or gambling under the common law. It was also ruled that, since all of the transactions consummated in the United States were upon "contract markets," designated as such by the Secretary of Agriculture under the Grain Futures Act, and in full compliance with the act and the regulations of the Federal Department, pursuant thereto, they were valid transactions by virtue of that act. The legal questions involved herein are the correctness of these rulings.

Petitioners' statement of the facts omits all reference to many of the findings of the Circuit Court

of Appeals, and is so meager and inaccurate in other respects concerning other pivotal, undisputed facts, that we deem an additional statement necessary.

**The Factual Evidence.**

The evidence discloses that, at all the times in question, plaintiff was engaged in the grain, grain elevator and grain brokerage business, and was a member in good standing of the Grain Exchanges or Boards of Trade of Kansas City, Missouri; Chicago, Illinois; Minneapolis, Minnesota; and Winnipeg, Canada. Plaintiff was also a clearing member of the Chicago and Kansas City Grain Clearing Houses or Associations (R. 30, 74, 141). The business of plaintiff consisted in buying and selling cash grain for itself and for its customers, the operation of grain elevators, and acting as agent or broker for its customers in the purchase and sale of grain for future delivery. In the year 1924, when all of the transactions in question were had, plaintiff maintained a principal office at Chicago, Illinois, and a branch office at Kansas City, Missouri. Plaintiff also maintained a branch office in Carrollton, Missouri, in charge of one E. S. McDonough.

The method of handling each of such transactions was as follows: Plaintiff maintained a private leased telegraph wire from its Carrollton office to its Kansas City office. Verbal orders of purchase or sale were given by defendants to plaintiff's agent at Carrollton, and were by him transmitted by telegram to plaintiff's

Kansas City office for acceptance or rejection by plaintiff. The orders in each and every instance were for plaintiff, as broker or agent, to purchase or sell grain for future delivery for the accounts of the respective defendants, on the Chicago, Minneapolis or Winnipeg Board of Trade or Grain Exchange. Plaintiff's agent at Carrollton, Missouri, had no authority to accept or reject any order for the purchase or sale of grain for future delivery, the acceptance or rejection of such order in each and every instance being made by plaintiff at its Kansas City office. If the order was accepted by plaintiff, plaintiff's Kansas City office immediately telegraphed the order for execution to plaintiff's Chicago office. If the order was for the purchase or sale of Chicago wheat, it was executed on the trading floor of the Chicago Board of Trade. If for the purchase or sale of Minneapolis or Winnipeg wheat, it was executed on the trading floor of that respective Board of Trade or Grain Exchange. Immediately upon the execution of an order, the Chicago office of plaintiff notified plaintiff's Kansas City office thereof by telegram, and the Kansas City office immediately made out and mailed to the (defendant) customer by United States mail, a written confirmation of the order and of its execution. Such written confirmation in each and every instance recited the date of the contract, the quantity and kind of grain bought or sold, the contract price (per bushel) of the commodity, the delivery month, and the Board of Trade or Exchange upon which the contract was executed. Such written confirmation was mailed to the

defendant customer on the same day that each order was given, accepted and executed. It recited: "We have this day bought (or sold) for your account, at Chicago, Ill., (Minneapolis or Winnipeg)." The particular commodity bought or sold was described in the written confirmation, together with the quantity, contract price (per bushel), and month of delivery thereof. Each of said written confirmations contained the following paragraph:

> "All transactions made by us for your account contemplate the actual receipt and delivery of the property and payment therefor. We reserve the right to close these transactions when deposits are running out, without giving further notice. We also reserve the privilege of clearing all transactions through Clearing Associations, if there be any, from day to day in accordance with the usage, rules or regulations of the Exchange where the trade is made, prevailing at the time. All purchases and sales made by us for you are made in accordance with and subject to the rules, regulations and customs of the Chamber of Commerce or Board of Trade where the trades are made, and the rules, regulations and requirements of its Board of Directors, and all amendments that may be made thereto. This contract is made under authority of the Act of Congress known as 'The Future Trading Act'." (R. 30-33, 74, 75, 116, 137, 143.)

Each contract was made and executed on the respective Board of Trade or Exchange in the name of plaintiff, as a clearing member of such Board of Trade or Exchange; and, likewise, was executed with a grain broker, who was also a clearing member of such Board of Trade or Exchange, in the name of said broker, act-

ing either for himself or for an undisclosed principal (R. 74, 75, 99). The reason for such procedure is that the rules of the respective Exchanges, and also Section 4 (b) of the Grain Futures Act, prescribe and require that all contracts for the purchase and sale of grain for future delivery shall be made by or through a clearing member of the Exchange which has been designated as a "contract market" (R. 75, 79, 81). The official report of the Grain Futures Administration of the Federal Government for the year 1924, contains the following language:

> "Under the rules of the exchanges the parties to every such contract must be members of the clearing association (or clearing house). Nonclearing members of the exchange may enter into such contract, but they are 'obliged to furnish forthwith the name of a clearing member who will accept and be liable for such contract.' Persons who are not members of the exchange must, of course, transmit their orders to some member for execution, and resulting transactions on the floor of the exchange must stand in the name of a clearing member. Speaking strictly, therefore, clearing members are the parties to these transactions on the exchange and they look for settlements to one another. Each clearing member then looks when necessary to his own customers, who are the persons for whom the transactions are made" (R. 110, 111).

Each transaction was evidenced immediately by a record in writing showing the date, the parties and their addresses, the property covered and its price, and the terms of delivery, in compliance with Section 4 (b) of the Federal Grain Futures Act (R. 98, 146, 147). Each clearing member kept a record of the name of the cus-

tomer for whose account the contract or transaction was made. Under the rules of the respective Exchanges, and the regulations of the Federal Department of Agriculture, the name of the customer for whose account the transaction was made could always be had on request (R. 139, 140, 146, 147). Each transaction was executed under the supervision of the Federal Grain Futures Administration, and reported to the Supervisor of the Grain Futures Administration, in accordance with the rules and regulations in force and adopted by the Secretary of Agriculture (R. 97). The Supervisor testified that plaintiff made daily written reports of all its 1924 transactions and dealings on the several Exchanges, in accordance with the regulations and requirements of the Department of Agriculture, and in accordance with the provisions and requirements of the Grain Futures Act, and that plaintiff was in good standing with the Federal Department. During the year 1924, the Federal Department did not require a member of an Exchange to make a report of the name of the customer for whom such member was acting, unless the particular transaction exceeded one-half million bushels of grain. No single transaction involved herein exceeded one-half million bushels. The Chicago Board of Trade, the Minneapolis Chamber of Commerce, and the Kansas City Board of Trade were officially designated as "contract markets" by the Secretary of Agriculture, in accordance with the provisions of the Grain Futures Act (R. 106-111).

Each clearing member of the respective Exchanges was responsible, either to the Exchange, or to the

Clearing Association of such Exchange, for all transactions of purchase or sale consummated for and on behalf of his customers. Each clearing member of the Exchange continuously maintained a large margin or deposit, aggregating several hundred thousand dollars, with the Clearing Association of such Exchange, to secure the performance of contracts made by such clearing member for and on behalf of his customers (R. 99, 146). At the close of each day's business, the clearing members reported their respective transactions to the Exchange, or to the Clearing Association, and on the following day, according to the rules of the Exchange and Clearing Association, the reported transactions of each member were cleared by offset, and each member credited or charged with whatever balance there might be in his favor or against him, in much the same manner as transactions between banks are cleared through the Bank Clearing Houses or Associations. The performance of each of the transactions involved herein was protected and secured by the margin or deposit maintained by plaintiff with the Clearing House of the Exchange on which such transaction was made and consummated (R. 99, 100).

Each contract of purchase or sale executed by plaintiff for and on behalf of the defendants obligated the plaintiff to the full performance of such contract. The rules of the Exchange required plaintiff either to receive or to deliver the grain contracted for, or to respond in money damages for failure to do so. Each of such contracts contemplated the actual delivery of the

grain contracted to be purchased or sold; but the customs, usages and rules of the respective Exchanges allowed and permitted the setting off of purchases by sales, or of sales by purchases, and most of such contracts or transactions for the purchase or sale of grain for future delivery were performed and carried out by such an offset (R. 80, 81, 82, 105). On most of the orders executed by plaintiff for and on behalf of defendants, the defendants put up a margin or deposit with plaintiff, just as plaintiff, in turn, maintained a margin or deposit with the Clearing Association of the Exchange on which the orders of defendants were executed (R. 68, 138, 145, 146).

The evidence is undisputed and uncontradicted that each and every transaction initiated by an order of each of the defendant customers of plaintiff was actually consummated by the execution, on one of the Exchanges or Boards of Trade of Chicago, Minneapolis, or Winnipeg, of an actual contract for the purchase or sale of grain for future delivery (R. 57, 59, 105, 137, 140, 141, 143, 146). Only one of the many transactions was executed on the Kansas City Board of Trade, or in the State of Missouri, and it resulted in a profit to defendant Calvert, and hence no recovery is sought by plaintiff upon that transaction (R. 58). None of the transactions in question was a sham or fictitious transaction, in which the plaintiff took the other or opposite side of the transaction with the defendant customer. In each and every transaction in question, plaintiff was personally and pecuniarily obligated and bound for the full per-

formance of the contract for the purchase or sale of grain for future delivery so made for and on behalf of the defendant customer (R. 65, 66, 68, 99, 138, 139, 143, 144, 145, 148). In no transaction in question did plaintiff profit by defendant's loss, or did plaintiff lose if defendant profited (R. 57, 120, 144). On the contrary, the undisputed evidence is that plaintiff never acted in any other capacity than that of agent or broker for the defendant customers, and its sole and only remuneration was the commission charged and earned by plaintiff for such services rendered for and on behalf of the defendant customers (R. 100, 120, 144).

The evidence is likewise undisputed that every purchase order and contract, and every sale order and contract, was fulfilled and performed by an offsetting sale or purchase before the time for the required taking or making delivery of the grain bought or sold, and that each such offsetting sale or purchase was actually executed, on the order of the defendant customer for whom it was made, on the trading floor of the Exchange or Board of Trade, in exactly the same manner as the original purchase or sale, between two clearing members, one of whom was plaintiff acting for the defendant customers, in accordance with the customs, rules and regulations of the Exchange, and in conformity with the terms and provisions of the Federal Grain Futures Act. There is no evidence whatsoever that the clearing member of the Exchange, or his principal, with whom plaintiff contracted for and on behalf of its defendant customer, had any intention, secret or otherwise, not to take or to make delivery

of the grain contracted for, or that plaintiff had any knowledge whatsoever respecting the intention of the opposite party to such contract.

While one of the defendants testified on direct examination (and it was agreed, on the trial of the consolidated causes, that the testimony of the one defendant was typical of that which would have been given by all of the defendants) that he did not intend to make or take delivery of any of the grain contracted for, and so told McDonough, nevertheless, on cross examination, he testified unequivocally that he was intending, in lieu of an actual delivery, to close out his initial purchases or sales with offsetting sales or purchases before the date of delivery, as provided for in the contracts. And the undisputed evidence is that every transaction of all of the defendants was handled in this manner. This defendant also testified to his full knowledge, understanding and intent that plaintiff, as agent and broker, was to execute all orders given by defendants for the purchase or sale of grain for future delivery upon the Grain Exchanges in Chicago, Minneapolis or Winnipeg (R. 156, 157; 161-166; see, also, opinion of Judge Gardner, R. 207-208; opinion of Judge VanValkenburgh, R. 212).

## SUMMARY OF THE ARGUMENT.

Respondent proposes to show that (1) each contract, having been executed in Chicago, Minneapolis or Winnipeg, its validity is not determinable by the law or statutes of Missouri, but is determinable by the rules and principles of the common law; (2) the contracts were presumably lawful and the burden was upon defendants to prove that they were wagering or fictitious transactions; (3) there was no substantial evidence that any of the transactions were mere fictions or wagers; (4) each transaction consummated in the United States, having been executed between plaintiff and another clearing member of a Grain Exchange designated by the Secretary of Agriculture as a "contract market," and in full compliance with the Federal Grain Futures Act, was valid under the provisions of that statute, which superseded all State legislation covering the same field.

## ARGUMENT.

### I.

The undisputed evidence shows that every contract was actually executed upon the Chicago, Minneapolis or Winnipeg Grain Exchange. None of the contracts was a Missouri contract. No transaction herein was executed in Missouri. It is the well established rule of law that the legality of all such transactions is exclusively determinable by the law of the place where the contracts are consummated and executed, and not by the law of the place where the original orders initiating the transactions are given. *Berry* v. *Chase*, 146 Fed. 625, 629; *Wilhite* v. *Houston*, 200 Fed. 390, 392; *Lyons Milling Co.* v. *Goffe & Carkener*, 46 Fed. (2d) 241, 245; *Mullinix* v. *Hubbard*, 6 Fed. (2d) 109, 114; *Hoyt* v. *Wickham*, 25 Fed. (2d) 777, 779; *Edwards Brokerage Co.* v. *Stevenson*, 160 Mo. 516, 528; 27 Corpus Juris, p. 1050. No law of the States of Illinois or Minnesota, or of the Dominion of Canada, was pleaded or shown in evidence in the instant case. In the absence of proof of the law of the place where the contracts were consummated and executed, the validity of the transactions must be determined in accordance with the rules and principles of the common law. *Edwards Brokerage Co.* v. *Stevenson*, 160 Mo. 516, 528. Applying the rules of the common law to the transactions herein, there was no sufficient or substantial evidence to invalidate any of the transactions.

Each contract and transaction having been executed without the State of Missouri, in Chicago, Minneapolis or Winnipeg, its validity was not determinable by any statute or law of Missouri. The so-called "bucket shop" statute of Missouri has no application to the transactions herein; nor have the Missouri decisions, applying the "bucket shop" statute of that state, any relevancy herein. It follows that the decision and the judgment of the Court of Appeals do not involve a question of local (Missouri) law, and no decision of the Missouri courts was necessary to be applied by the Court of Appeals.

II.

The contracts and transactions herein are fair on their face, untainted with any wrongful or illegal intent, and are presumptively lawful. The defendants affirmatively alleged that the contracts were gambling or wagering transactions. The burden of proving that a transaction is a wager rests upon the party alleging it. *Clews* v. *Jamieson*, 182 U. S. 461, 490, 491; *Bibb* v. *Allen*, 149 U. S. 481, 492; *Rountree* v. *Smith*, 108 U. S. 269; *Cleage* v. *Laidley*, 149 Fed. 346, 352; *Browne* v. *Thorn*, 272 Fed. 950, 952; *Gettys* v. *Newburger*, 272 Fed. 209, 216; *Mullinix* v. *Hubbard*, 6 Fed. (2d) 109; *Wilhite* v. *Houston*, 200 Fed. 390; *Lyons Milling Co.* v. *Goffe & Carkener*, 46 Fed. (2d) 241, 246.

III.

Defendants failed to sustain the burden of proving their allegations that the transactions were wagers. As

correctly found by the Court of Appeals, there was no substantial evidence that the transactions were mere fictions or wagers at common law.

The fact that each contract of purchase or sale of grain for future delivery, executed by plaintiff as defendants' agent and broker, was discharged and performed by an offsetting contract of sale or purchase of grain, before the times of delivery fixed by the original contracts arrived, does not render such contracts and transactions illegal or unenforceable. It is conclusively settled, by the controlling decisions of this Court and of the Courts of Appeals, that an offsetting contract of sale or purchase of grain is the legal equivalent, and has all the effect, of actual delivery, and is entirely consistent with a serious and lawful business purpose and with an intent that the contracts shall be performable in accordance with their expressed terms. The intention, on the part of a purchaser or seller of grain for future delivery, that the contract shall be closed out before delivery is due, by set-off or ringing off in accordance with the rules and regulations of the Exchange and its clearing house, is not sufficient or substantial evidence that the transaction is wrongful or illegal, or does such intention make the contract a wager and invalid. *Board of Trade of Chicago* v. *Christie Grain & Stock Co.*, 198 U. S. 236, 248, 250; *Clews* v. *Jamieson*, 182 U. S. 461, 489; *Cleage* v. *Laidley*, 149 Fed. 346, 350; *Gettys* v. *Newburger*, 272 Fed. 209, 218-220; *Wilhite* v. *Houston*, 200 Fed. 390, 392; *Browne* v. *Thorn*, 272 Fed. 950, affirmed 260 U. S. 137; *Mullinix* v. *Hubbard*, 6 Fed. (2d)

109; *Hoyt* v. *Wickham,* 25 Fed. (2d) 777, 779; *Lyons Milling Co.* v. *Goffe & Carkener,* 46 Fed. (2d) 241; *Solomon* v. *Newberger,* 35 Fed. (2d) 328, 330. Nor does the fact that defendants, in most instances, put up margins to protect plaintiff from loss in executing the orders of defendants tend to show that the contracts were wagers or gambling transactions. *Gettys* v. *Newburger,* 272 Fed. 209, 220.

A contract, fair upon its face and presumably lawful, cannot be declared void or unenforceable as a wagering contract upon proof that one only of the parties thereto intended it to be such; it must be shown that both the opposite parties to the contract intended and understood the transaction to be a wagering or gambling transaction. *Clews* v. *Jamieson,* 182 U. S. 461, 489; *Bibb* v. *Allen,* 149 U. S. 481, 492; *Rountree* v. *Smith,* 108 U. S. 269; *Berry* v. *Chase,* 146 Fed. 625, 630; *Wilhite* v. *Houston,* 200 Fed. 390, 392; *Cleage* v. *Laidley,* 149 Fed. 346, 352; *Gettys* v. *Newburger,* 272 Fed. 209, 219; *Lyons Milling Co.* v. *Goffe & Carkener,* 46 Fed. (2d) 241, 246; *Edwards Brokerage Co.* v. *Stevenson,* 160 Mo. 516, 528, 61 S. W. 617; *State of Kansas ex rel.* v. *Rosenbaum Grain Co.,* 115 Kan. 40, 50, 226 Pac. 80.

As rightly found by the Court of Appeals, there was no evidence that the other and opposite parties to the contracts, namely, the dealers or brokers upon the Exchanges at Chicago, Minneapolis or Winnipeg, where each contract was consummated and executed, had any intention but that the contracts were to be fulfilled and performed according to their expressed terms, by

the actual physical delivery of grain and payment therefor, before the times fixed by the contracts for delivery. The record herein is wholly devoid of any evidence tending to show that the dealers or brokers upon said foreign Exchanges had any intention that the contracts were not to be performed according to their expressed terms, or that they intended such transactions to be mere wagers upon the fluctuations of the grain market.

There is not a scintilla of evidence in the record, and no allowable or justifiable inference of fact can be drawn from the evidence, that any transaction herein was sham, pretended, or fictitious. On the contrary, the undisputed evidence, as found by the Court of Appeals, is that every transaction was real and actual. The law requires an open, visible connection between the principal and evidentiary facts and the deductions from them, and does not permit a finding or decision to be made on remote or conjectural inferences. Direct and positive evidence, which is undisputed and uncontradicted, may not be overthrown by remote and conjectural inferences of doubtful character. *United States* v. *Ross*, 92 U. S. (2 Otto) 281; *Manning* v. *Mutual Life Insurance Co.*, 100 U. S. (10 Otto) 693. Inferences of fact can be legitimately drawn only from premises which are certain, direct and immediate, and which are not remote, conjectural and grounded upon mere possibilities. *Illinois Surety Co.* v. *Standard Underground Cable Co.*, 238 Fed. 546, 548; *United States Fidelity & Guaranty Co.* v. *Des Moines National Bank*, 145 Fed. 273, 279; *Cunard Steam Ship Co.*

v. *Kelley*, 126 Fed. 610, 617; *George* v. *Capital Traction Co.*, 295 Fed. 965, 968.

The Eighth Circuit Court of Appeals rightly found, upon the record herein, that every transaction was real and actual, and that there was no substantial evidence, or reasonable and legitimate inference, that any transaction was pretended or fictitious, or that any contract herein was intended to be a wager or gambling transaction.

The decision of the Court of Appeals upon the issue of the validity of the transactions at common law is tenable and in full accord and harmony with the controlling decisions of this Court, and of other Circuit Courts of Appeals, and with the weight of judicial authority upon the question of general law so decided.

The decision of the Court of Appeals upon that issue alone is a sufficient and complete determination of the instant case, independently and regardless of any consideration of the Grain Futures Act, or of its application and effect on the transactions herein.

IV.

Each transaction (except those at Winnipeg), having been executed between plaintiff and another clearing member of a Grain Exchange designated by the Secretary of Agriculture as a "contract market," and in full compliance with the Grain Futures Act of Congress, was valid and enforceable under the provisions of that Federal statute, which superseded and displaced all existing state legislation covering the same field and subject matter.

The Grain Futures Act (42 Stat. 998-1003; 7 U. S. C. A., Secs. 1-17), approved September 21, 1922, was enacted by Congress for the expressed purpose of preventing and removing obstructions and burdens upon interstate commerce in grain, by regulating transactions in grain future exchanges. In Section 2 of the act, Congress defined a transaction in respect to any article of grain to be in interstate commerce "if such article is part of that current of commerce usual in the grain trade whereby grain and grain products * * * are sent from one state with the expectation that they will end their transit, after purchase, in another," and that "articles normally in such current of commerce shall not be considered out of such commerce through resort being had to any means or device intended to remove articles in respect thereto from the provisions" of the act. In Section 3 of the act, Congress made the specific recitals and findings of fact that "transactions in grain involving the sale thereof for future delivery as commonly conducted on Boards of Trade and known as 'futures' are affected with a national public interest; that such transactions are carried on in large volume by the public generally and by persons engaged in the business of buying and selling grain and the products and by-products thereof in interstate commerce; that the prices involved in such transactions are generally quoted and disseminated throughout the United States and in foreign countries as a basis for determining the prices to the producer and the consumer of grain * * * and to facilitate the movements thereof in interstate commerce; that

such transactions are utilized by shippers, dealers, millers and others engaged in handling grain * * * in interstate commerce as a means of hedging themselves against possible loss through fluctuations in price; that the transactions and prices of grain on such Boards of Trade are susceptible to speculation, manipulation and control, and sudden or unreasonable fluctuations in the prices thereof * * *, and that such fluctuations in prices are an obstruction to and a burden upon interstate commerce in grain * * * and render regulation imperative for the protection of such commerce and the national public interest therein."

The constitutionality of the Grain Futures Act, and the exclusive power and authority of Congress to deal with the subject matter thereof, was conclusively decided by this Court in *Board of Trade of Chicago* v. *Olsen,* 262 U. S. 1. Analogous transactions, comprising the purchase and sale of cattle and other livestock, likewise have been conclusively held by this Court to directly affect commerce among the states and as threatening to obstruct or burden the freedom of interstate commerce, and, therefore, to be properly the subjects of regulation and control by Congress under and by virtue of the exclusive powers and authority conferred by the commerce clause of the Constitution of the United States. *Swift & Co.* v. *United States,* 196 U. S. 375, 398; *Stafford* v. *Wallace,* 258 U. S. 495. The plain import of those decisions is that Congress, by enacting the Grain Futures Act, has entered and appropriated the legislative field

with respect to the regulation and control of transactions in grain futures executed upon contract markets.

The so-called "bucket shop" statute of Missouri is wholly referable to, and rests upon, the police power of the state. It obviously deals with and regulates the same and identical subject matter dealt with by Congress in the Grain Futures Act, namely, transactions in grain futures. It is conclusively settled by the uniform decisions of this Court that all laws and statutes resting upon the police power of the state must yield whenever Congress, in the exercise of the exclusive powers granted to it by the Federal Constitution, legislates on the same subject matter. The power and authority of Congress to regulate interstate commerce, and all the instrumentalities and transactions affecting such commerce, is supreme and exclusive. Whenever Congress rightfully exercises such power by the enactment of a law regulating transactions in or affecting interstate commerce, the right of a state to apply its police power for the purpose of regulating similar transactions affecting interstate commerce ceases, and thereafter such state laws have no application or effect upon those matters with respect to which Congress has undertaken to legislate and regulate. *Gulf, C. & S. F. R. R. Co.* v. *Hefley,* 158 U. S. 98; *Northern Pacific Ry. Co.* v. *State of Washington,* 222 U. S. 370; *Missouri Pacific Ry. Co.* v. *Porter,* 273 U. S. 341.

Congress, by the enactment of the Grain Futures Act, having entered the legislative field with respect to transactions in grain futures, that Congressional act has superseded and displaced all state laws which

theretofore attempted to regulate or deal with the same subject matter. *Stafford* v. *Wallace,* 258 U. S. 495; *Swift & Co.* v. *United States,* 196 U. S. 375; *Board of Trade of Chicago* v. *Olsen,* 262 U. S. 1; *Chamber of Commerce of Minneapolis* v. *Federal Trade Commission,* 13 Fed. (2d) 673, 685; *Lyons Milling Co.* v. *Goffe & Carkener,* 46 Fed. (2d) 241; *State ex rel. Burnett* v. *Rosenbaum Grain Co.,* 115 Kan. 40, 222 Pac. 80; *Goffe & Carkener* v. *Henneberger,* 132 Kan. 211, 294 Pac. 672.

Congress, by Section 4 of the Grain Futures Act, has manifested its purpose to regulate and control all dealings and transactions in grain futures by making it unlawful for any person to make or execute any contract of sale or purchase of grain for future delivery, except under two specified alternatives: (a) where the seller at the time of the making of the contract is the owner or grower, or the renter of land on which the same is to be grown, of the actual physical property (the grain) covered thereby; and, (b) "where such contract is made by or through a member of a board of trade which has been designated by the Secretary of Agriculture as a 'contract market,' * * * and if such contract is evidenced by a record in writing which shows the date, the parties to such contract and their addresses, the property covered and its price, and the terms of delivery." Having made it unlawful to engage in transactions in grain futures except under the one or the other of the expressed alternatives, it seems obvious that it was the manifest intention and purpose of Congress to legitimatize those transactions, dealings

and contracts in grain futures as fall fairly within either of the excepted alternatives. The act does not in terms prescribe, as the criterion by which the validity of any transaction in grain futures is to be determined and measured, that the purchaser shall intend to take, or that the seller shall intend to make, actual physical delivery of the grain. Had Congress intended to fix such a test, it would doubtless have so provided in express and positive terms in the Grain Futures Act. Congress was satisfied to leave the validity of transactions in grain futures to be measured and determined by the compliance of the parties with the one or the other of the excepted alternatives prescribed in the act, and not to rest the validity of such transactions upon the mere intention of the parties, the proof of which intention is, to say the least, always unsatisfactory, uncertain and doubtful. The Federal and the Missouri legislation, both of which deal with the subject of transactions in grain futures, prescribe widely different standards, criteria and tests by which the validity of such transactions are to be measured and determined. Because of such conflicting legislation, that of the State must give way to that of the National Congress, acting in pursuance of the exclusive powers conferred by the commerce clause of the Federal Constitution. As truly and pointedly said by the Supreme Court of Kansas in *State ex rel.* v. *Rosenbaum Grain Co., supra,* "the grain company does not have two masters over its handling of grain futures."

The petitioners cite the decision of the District Court for the Northern District of Georgia in *Fenner*

v. *Boykin,* 3 Fed. (2d) 674, affirmed 271 U. S. 240, as being in conflict with the decision of the Court of Appeals herein. That case was commenced for the purpose of enjoining the defendants, public officers of Georgia, from arresting and prosecuting the plaintiffs under a Georgia statute forbidding dealings and transactions in futures on margins within that state. The case involved transactions in cotton futures only, and the District Court remarked, in its reported opinion, that "transactions in future cotton are here particularly in question, and the discussion will be limited to them." The case did not involve any legislation of Congress dealing with transactions in cotton futures. Neither prior to, nor since, the decision in *Fenner* v. *Boykin* has Congress undertaken to regulate dealings and transactions in cotton futures, as Congress manifestly has done with respect to transactions in grain futures by the enactment of the Grain Futures Act, which act has nothing to do with transactions in cotton futures. Congress not having entered and appropriated the legislative field in respect to transactions in cotton futures, it necessarily follows that the Georgia statute, in so far as it dealt with and undertook to regulate transactions in cotton futures, had never been displaced and superseded by Congressional legislation. As was correctly held in *Fenner* v. *Boykin,* the Georgia statute exclusively occupied the field of legislation as respects transactions in cotton futures, and was enforceable by the state officers in that respect without interference of the Federal Courts. Such is the full extent and import of the decisions of

the District Court, and of this Court, in *Fenner* v. *Boykin,* and that case has no bearing or relation on the question of the application, scope and effect of the Grain Futures Act.

Other cases cited by petitioners as being in conflict with the decision of the Court of Appeals herein are *State of Missouri* v. *Christopher,* 318 Mo. 225, 2 S. W. (2d) 621, and *C. A. King & Co.* v. *Horton,* 116 Ohio St. 205, 156 N. E. 124. The Christopher case involved a Missouri statute which prohibited the keeping of a "*place*" where is permitted "the buying and selling of grain and other products without any intention of receiving and paying for the property so bought or delivering the property so sold." The Missouri Supreme Court found that the *place* in Sedalia, Missouri, maintained by the defendant Christopher, was not a "contract market," and that no transaction was executed at any other place or upon any other market than Sedalia, and, therefore, the Grain Futures Act had no application. However, the Missouri Supreme Court correctly conceded that "the effect of the Grain Futures Act was to restrict the operation of State laws, so as to make them inapplicable to transactions coming within the terms of the Grain Futures Act, conducted on a 'contract market' according to the rules prescribed by that market." (318 Mo., l. c. 247, 2 S. W. (2d), l. c. 630.)

In *King & Co.* v. *Horton,* the Ohio Supreme Court found, upon the factual evidence in that case, that the transactions wholly failed to comply with the re-

quirements of Section 4 of the Grain Futures Act, and that the record conclusively manifested that both the opposite parties to the transactions intended them to be mere wagers or bets upon the rise or fall of the grain market. The factual evidence upon which the Ohio Supreme Court ruled the case of *King & Co.* v. *Horton* is wholly at variance with that in the instant case, wherein the Circuit Court of Appeals has expressly found that there is no evidence that the transactions were intended by the parties to be wagers or bets, and that every transaction was in full compliance with the requirements of the Grain Futures Act. In so far as the decision of the Ohio Supreme Court may be conceived to hold that there is no real or apparent conflict between Federal and State legislation undertaking to regulate transactions in grain futures, and that such Federal and State legislation operate concurrently, such decision of the Ohio Supreme Court is clearly out of harmony with, and contravenes, the controlling Federal decisions, both of this Court and of the Courts of Appeals.

It is, therefore, plainly manifest that the Circuit Court of Appeals has decided no principle or question of Federal law which has not heretofore been conclusively settled by this Court; nor has it decided a Federal question in any way in conflict with applicable and controlling decisions of this Court.

For all of the foregoing reasons, it is respectfully submitted that the decision and the judgment of the Eighth Circuit Court of Appeals are correct, and in ac-

cordance with the principles of law announced in controlling and applicable decisions of this Court and of other Circuit Courts of Appeals, and in harmony with the weight of judicial authority, and, therefore, the writ of certiorari prayed for herein should not issue.

I. P. Ryland,
Arthur Mag,
Roy B. Thomson,
Paul R. Stinson,
Alfred M. Seddon,
*Counsel for Respondent,*
*Uhlmann Grain Company.*

Ryland, Stinson, Mag & Thomson,
*Of Counsel.*

FILE COPY

NOV 14 19

CHARLES ELMORE

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1932

## No. 63

A. P. DICKSON, JOE DICKSON, I. N. CALVERT, C. T. DICKINSON AND ERNEST MILLER, PETITIONERS,

VS.

UHLMANN GRAIN COMPANY, A CORPORATION, RESPONDENT.

## SUPPLEMENTAL ARGUMENT FOR RESPONDENT OPPOSING CERTIORARI.

I. P. Ryland,
Arthur Mag,
Roy B. Thomson,
Alfred M. Seddon,
Paul R. Stinson,
*Counsel for Respondent, Uhlmann Grain Company.*

Ryland, Stinson, Mag & Thomson,
*Of Counsel.*

## SUBJECT INDEX


Page

Argument—

I Since neither the Missouri law nor its statutes govern these transactions, it is unnecessary for this Court to decide whether the Grain Futures Act has superseded those statutes ..... 2

II The contracts in question, executed by plaintiff as broker for and in behalf of defendants upon officially designated contract markets, are valid and enforceable under the Federal Grain Futures Act ..... 16

(1) Congress from the evidence before it had the power to find and decree that these transactions so affect interstate commerce as to become a part of it and, therefore subject to Federal regulation ..... 17

(2) Congress has entered and appropriated the field ..... 19

(3) The Grain Futures Act has pronounced these contracts valid when executed in conformity with the Act; or at least preserved to them their validity at common law ..... 40


## TABLE OF CASES CITED:


Page

Board of Trade v. Christie, 198 U. S. 236....13, 16, 27, 29

Board of Trade v. Gentry, Attorney General (unreported) .....17, Appendix

Board of Trade v. Olsen, 262 U. S. 1, 67 L. Ed. 839.....18, 19, 26, 34, 35, 39

Browne v. Thorn, 272 Fed. 950.....8, 38

Claiborne Commission Co. v. Stirlen (Mo. App.) 262 S. W. 387.....37

## TABLE OF CASES CITED (Continued)


Clews v. Jamieson, 182 U. S. 461, 45 L. Ed. 1183 ..... 11, 13

Edwards Brokerage Co. v. Stevenson, 160 Mo. 516 ..... 3, 14, 15

Gettys v. Newburger, 272 Fed. 209 ..... 8, 11, 12, 13, 16

Gibbons v. Ogden, 9 Wheat. 1, 6 L. Ed. 23 ..... 24

Goffe & Carkener v. Henneberger, 132 Kan. 211, 294 Pac. 672 ..... 13, 17

Gordon v. Welles, 222 Mo. App. 609 ..... 37

Hill v. Wallace, 259 U. S. 44 ..... 26

Hoyt v. Wickham, 25 Fed. (2d) 777 ..... 8, 31

King v. Horton, 116 Ohio St. 205, 156 N. E. 124 ..... 17, 37

Lyons Milling Co. v. Goffe & Carkener, 46 Fed. (2d) 241 ..... 13, 17

Mullinix v. Hubbard, 6 Fed. (2d) 109 ..... 8

Napier v. Atlantic Coast Line, 272 U. S. 605, 71 L. Ed. 432 ..... 24

Pennsylvania Railroad v. Public Service Commission of Pennsylvania, 250 U. S. 566, 63 L. Ed. 1142 ..... 22-23

Railroad v. Hefley, 158 U. S. 99 ..... 30

Stafford v. Wallace, 258 U. S. 495, 66 L. Ed. 735 ..... 19

State ex rel. v. Rosenbaum Grain Co., 115 Kan. 40, 226 Pac. 80 ..... 13, 17, 41

State v. Christopher, 318 Mo. 225 ..... 12, 17, 33, 35

Swift & Co. v. United States, 196 U. S. 375, 49 L. Ed. 518 ..... 19

Thorn v. Browne, 257 Fed. 519 ..... 8, 38

## TABLE OF CASES CITED (Continued)

Uhlmann Grain Co. v. Dickson, 56 Fed. (2d) 525 ..... 17

United States v. Ferger, 250 U. S. 199, 63 L. Ed. 936 ..... 19

United States v. Hill, 248 U. S. 420, 63 L. Ed. 337 ..... 23

Western Union Telegraph Co. v. Boegli, 251 U. S. 315, 64 L. Ed. 281 ..... 22

Wilhite v. Houston, 200 Fed. 390 ..... 11

## STATUTES CITED:

Grain Futures Act: Page

Sec. 3—footnote ..... 18

Sec. 4—footnote ..... 20

Sec. 7 ..... 30

Revised Statutes Missouri 1929, Sections 4323, 4324 ..... 32

Revised Statutes Missouri 1929, Section 4318 ..... 31-32

## CONGRESSIONAL RECORD CITED:

Congressional Record: Page

June 26, 1922, 9404 ..... 26

June 26, 1922, 9410 ..... 29

June 26, 1922, 9406 ..... 34

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1932

## No. 63

A. P. DICKSON, JOE DICKSON, I. N. CALVERT, C. T. DICKINSON AND ERNEST MILLER, PETITIONERS,

VS.

UHLMANN GRAIN COMPANY, A CORPORATION, RESPONDENT.

## SUPPLEMENTAL ARGUMENT FOR RESPONDENT OPPOSING CERTIORARI.

(Note: The paging of the record before and after certiorari was issued is different. In our original brief the references are to the paging in the old record; in this brief to the new. Some of the outstanding facts, stated briefly before, have been more fully developed and set down in the discussion to which they apply.)

## ARGUMENT.

### I.

**Since Neither the Missouri Law nor Its Statutes Govern These Transactions, It Is Unnecessary for This Court to Decide Whether the Grain Futures Act Has Superseded Those Statutes.**

Refusing all of plaintiff's requests (12-16), the trial court of its own motion, made a series of fact findings (16-19) declaring that in all of the transactions involved, plaintiff pretended to act as defendants' broker, pretended to execute purchases and sales for defendants on the Grain Exchanges of Chicago, Minneapolis and Winnipeg; that all of the transactions were fictitious, and that none were actually executed between clearing members of the Exchange; that in all of such transactions plaintiff "bet with its customers and took the other side of the deal." In other words, that court found as a fact that plaintiff was conducting a bucket shop in Carrollton, Missouri, was making bets with its own customers, the defendants, and merely going through the form of executing *bona fide* contracts on these Exchanges.

If these findings were warranted, the real agreements between plaintiff and defendants were a succession of gambling transactions which began and ended in the State of Missouri, were void everywhere, and were not sanctioned by the Grain Futures Act. If, however, plaintiff, employed by and acting as agent or broker for the defendants, entered into actual contracts for the purchase and sale of grain for future delivery on the Grain Exchanges of Chicago, Minneapolis and Winnipeg, then their validity is to be determined by the

law of the places where they were executed and to be performed, and the Missouri law does not apply. Only two transactions—a purchase closed out by an offsetting sale,—were executed in Missouri (48). These resulted in a profit to the defendant Calvert, which was paid to him and is not involved here. All of the others were for the purchase or sale of grain for delivery in Chicago, Minneapolis or Winnipeg and were executed on the Grain Exchanges there (48).

If these contracts were real and not simulated, then the Missouri Supreme Court concedes (*Edwards Brokerage Co.* v. *Stevenson,* 160 Mo. 516, 528) and the private international law of the land holds that their validity is not determinable by Missouri law. (See authorities, page 13, Respondent's Brief.) In Judge Van Valkenburgh's concurring opinion in the court below, he said (200):

> "In the first place the Missouri law is out of the picture, because it is conceded that none of the sales involved took place or were consummated upon the Kansas City Board of Trade * * *."

The trial court's findings are not only entirely unsupported by any evidence in the record, but are directly contrary to the documentary and oral testimony of plaintiff as to each transaction, which is not disputed by defendants, and contrary to the testimony of defendants themselves, and the admissions of their counsel in open court. Plaintiff's suits were for the recovery of commissions earned and advances made in behalf of defendants while acting as broker or agent for them. An itemized statement of the account was attached to each petition (3). On the trial, plaintiff introduced its ledger accounts with each defendant (35-42) and started to

prove their correctness by its records (44) showing each purchase and offsetting sale, which records it was explained (47).

> "represent and reflect the moneys which we paid out in excess of the moneys which we received covering the trades that we made for their account, plus our commission * * *. None of the items in these transactions represent any profit made by the Uhlmann Grain Company out of any loss by any defendant in any transaction."

The introduction of all of them was waived by defendants' counsel admitting the correctness of the accounts sued on, and that if the itemized statements were introduced in evidence, they "would prove the total of the amount sued on" (58, 59). Plaintiff's testimony, undenied, is that in the year 1924 (the period covering these transactions), it was in the grain brokerage business and a member in good standing of the Boards of Trade or Grain Exchanges of Chicago, Kansas City, Minneapolis and Winnipeg (30, 60). Its head office was in Chicago, with branch offices in Kansas City and Carrollton, Missouri. Each of the transactions in question was initiated by a defendant giving an order to plaintiff's local agent at Carrollton, which was transmitted by telegraph to plaintiff's office at Kansas City. These orders in every instance were for plaintiff, as broker or agent, to purchase or sell grain for future delivery for the account of the defendant on the Chicago, Minneapolis or Winnipeg Exchange. If the Kansas City office accepted the order, it was immediately telegraphed to plaintiff's Chicago office for execution. If the order was for Chicago wheat, it would be executed on the trading floor of the Chicago Board of Trade. If

the order covered Minneapolis or Winnipeg wheat, it was executed on the floor of that Exchange in the same manner. Plaintiff was a clearing member of the Chicago Exchange, and a non-clearing member at Minneapolis and Winnipeg. Only clearing members were permitted to contract, and in executing defendants' orders, plaintiff contracted in its own name on the Chicago Exchange, with another clearing member representing himself or his principal. The Minneapolis and Winnipeg orders were executed by and in the name of plaintiff's correspondent with another clearing member in which plaintiff's correspondent looked to plaintiff for performance (30-34, 43-52, 60-65, 70-75, 80-83, 102). Each of the contracts thus executed by the brokers or clearing members was immediately followed by an exchange of written confirmations (61-62) Plff's. Exs. 14-17, 63-64). Plaintiff's correspondents at Minneapolis and Winnipeg confirmed to plaintiff by telegram, contracts executed there (64). On the day that plaintiff received an order from defendants, which was accepted and executed, it would mail from its Kansas City office to the defendant in Carrollton a written confirmation of the order and its execution (31-33). That defendants received these confirmations following the execution of every order was admitted (44). These confirmations recited that plaintiff had on that day bought (or sold) for defendant's account at Chicago (Minneapolis or Winnipeg) the commodity contracted for, described the quantity, the delivery month, the article bought or sold and the price; that all transactions made by plaintiff for the defendant customer's account contemplate the actual receipt and delivery of the property and payment therefor, that all purchases and sales made by plaintiff for defendants were made in accordance with and

subject to the rules of the Board of Trade where made (33). Plaintiff, in turn, in executing defendants' orders on these Exchanges obligated itself (as did the other contracting broker) to make or accept delivery of the grain contracted for, to pay for the grain or to respond in damages for failure to do so. (See stipulation of counsel, 69, and rules of the Exchanges, 65-69). The rules of these Exchanges, however, also authorized and recognized the practice of offsetting purchases or sales in lieu of the actual delivery of the grain (Rule XXII, Sec. 6, 67). These rules also forbade bucket shop transactions or dealing in differences on the fluctuations of the market without a *bona fide* purchase and sale of the articles or an actual delivery (Rule XXIII, Sec. 8, Par. 1, 67). Plaintiff at all times maintained a large margin, aggregating several hundred thousand dollars, with the Clearing Association of the Chicago Board of Trade to secure the performance of each contract made by it for itself or on behalf of its customers (81-82, 134), and maintained a margin with its correspondent broker on the Minneapolis and Winnipeg Exchanges (82). It was personally obligated on each contract executed for defendants (52).

Defendants now contend (Suppl. Brief, 10) that the documentary evidence of plaintiff showing the course of dealing did not refer to any Carrollton customer. The statement is incorrect. See Plff's. Exh. 1, 31; Exh. 2, 33, identified p. 32. Exhibit 8, (45), is a copy (introduction of original waived, 44) of plaintiff's original record of a typical purchase and sale for the defendant, A. P. Dickson. Plaintiff's journal and ledger entries were made up from these sheets (47). In each transaction with defendants, similar records were made, and in each instance a copy was mailed to the defendant (44).

This was admitted in open court (44). Exhibits 8a and 8b, (45, 46-47), are typical confirmations mailed to defendant, A. P. Dickson, at Carrollton. It was admitted that such confirmations were sent out to each defendant in each instance on the execution of each order (44). Exhibit 9, (50a, 50b) is two telegrams, each dated August 19, 1924. The first is a telegram received at Chicago from Kansas City and initiating in Carrollton. It is an order to buy ten December Chicago wheat and to sell ten Winnipeg October wheat for the account of "CN9." CN9 means a Carrollton customer (31). It also shows the execution of both orders. The second is the telegraphic confirmation of the execution by plaintiff's Winnipeg correspondent of the Winnipeg order. The first telegram is an original order. That part of the order to buy Chicago wheat would be telephoned to the floor of the exchange and there executed (61). Plaintiff's Exhibits 14, 15 and 16 (63); Exhibit 17 (64); Exhibits 21, 22, 23 and 24 (71, 72, 73, 74) are typical written confirmations between plaintiff and the other contracting broker on the Chicago Exchange, and between plaintiff and its correspondent on orders executed on the Minneapolis and Winnipeg Exchanges. The latter group (Exhs. 21 to 24) give the names of the other contracting members at Minneapolis and Winnipeg. In connection with the introduction of these exhibits, defendants' counsel admitted (62) that similar documents were made up in the transactions had with defendants. Individual proof as to each transaction was waived (82).

When defendants admitted the correctness of each account sued on, that confirmations were received by them immediately on the execution of each order, that statements were sent to them at the conclusion of each purchase and sale, that the typical confirmations of transactions executed on the exchanges showing the

amount of grain contracted for, the price, the name and address of the other contracting party were representative of similar executions and the record thereof in the transactions with defendants; and when individual proof was waived, they should be and are estopped at this time to question the scope of that proof. In addition to this, the legal presumption is that the transactions executed on these exchanges were valid and complied with the rules of the exchanges and the law governing them. And the burden of proof was on the defendants to show the contrary. *Mullinix* v. *Hubbard,* 6 Fed. (2d) 109, 110; *Hoyt* v. *Wickham,* 25 Fed. (2d) 777, 780; *Thorn* v. *Browne,* 257 Fed. 519, 524-525; *Gettys* v. *Newburger,* 272 Fed. 209, 214; *Browne* v. *Thorn,* 272 Fed. 950, 952.

On every transaction which resulted in a loss, plaintiff, instead of profiting by that loss, actually paid it (51). Where the transaction resulted in a profit to the defendant, plaintiff mailed him a check for the amount (52). While it is true that none of these transactions resulted in an actual delivery of the grain contracted for, it is also true that in each instance they were satisfied or settled by offsetting purchases or sales before delivery date (146, 162-163); and such offsetting contracts were actually executed on the same Exchanges and in the same manner as the initiating purchase or sale (122).

Defendant Dickson, testifying for all of the defendants, on cross-examination said (151-152):

"Q. Did you understand that the Uhlmann Grain Company was to execute your orders for you?
A. Yes, sir.
Q. And act as your agent?
A. Yes, sir.

Q. In making these purchases?
A. Yes, sir.
Q. Either in Winnipeg or in Chicago, or both?
A. Yes, sir.
Q. And that these transactions were to be consummated on those markets; you understood that, Mr. Dickson?
A. Yes, sir.
Q. Then you understood that the contract to sell was the contract whereby the Uhlmann Grain Company, acting for you, agreed that during a certain month in the future that you would sell so many bushels of wheat?
A. Yes, sir.
Q. On this market?
A. Yes, sir."

Defendants' witness, T. H. Cramer, testified thus (146-147):

"Q. Now, whenever any of those contracts were entered into between you and as you say, Mr. McDonough, that you made a purchase, for instance, did you later make a sale against that purchase before delivery time came?
A. Yes, sir.
Q. Did that in every instance?
A. Always.
Q. Never did anything else?
A. No, sir.
Q. And when these purchases against sales were made they were made at your direction, were they?
A. Usually.
Q. And that was in accordance with your intention before you entered into these dealings, that was the way you intended to do it before, wasn't it?
A. What?
Q. That is to say, before the time of delivery arrived you were going to get rid of your contract,

that is the way you intended to do when you first started to deal with McDonough?
A. That is the instructions I gave to him.
Q. And he carried them out, didn't he?
A. Yes, sir."

These undisputed and conceded facts preclude as impossible, bucket shops, pretended transactions on these Grain Exchanges, and the idea that plaintiff and defendants were betting with each other on the rise and fall of the market. Indeed, the trial court itself did not really intend to so find, as is evidenced by this: Plaintiff submitted a series of requests for findings (12-16). Refusing all of these requests, the court took some of them, inserted the words "purported," "pretended," "fictitious," and made up its own findings from those requests (16-18). In its written opinion, the learned trial court said in part (180):

> "Its (plaintiff's) method of operation was to receive verbal orders for the purchase or sale of grain for future delivery on one of the markets of which it was a member. Such purchase or sale in every case involved future delivery. When a verbal order was given, plaintiff's branch manager transmitted such order to its office in Kansas City over the private wire. At that office the order was confirmed or rejected. The plaintiff, as agent for the defendant, then undertook to make the purchase or consummate the sale at one of the contract markets. Plaintiff's compensation was derived from commissions on the transactions."

The fact findings in the opinions of Judge Gardner and Judge Van Valkenburgh (186-189, 190, 194-195, 198, 199, 201) that plaintiff as defendants' broker con-

summated actual contracts on Grain Exchanges outside of Missouri, are in precise accord with the undisputed facts.

Notwithstanding the overwhelming concord of the evidence, defendants still insist that their orders and plaintiff's execution of them were pretenses, and they point to the testimony of the defendant Dickson that he told plaintiff's local agent at Carrollton that there was to be no delivery of the grain, and that the latter assured him that he would get him "out" of his contracts before delivery date (152). This testimony, even if accepted as true, affirms as real his contracts of purchase and sale, and the witness' own understanding of their binding character. If he had not understood that he was bound by his contracts to take or make delivery of the wheat within a certain time, he would not have been arranging for an offsetting purchase or sale before the arrival of that time. Not only by their testimony, but in their conduct, they proceeded under and not outside the terms of their written agreements. Under these contracts they were bound to take or deliver the grain. But those contracts were executed on exchanges whose rules and age-old practices permitted offsetting purchases or sales (Rule XXII, Sec. 6, 67). All of the confirmations sent to defendant following the execution of each order recited that each purchase and sale was made in accordance with the rules, regulations and customs of the Exchange on which they had been executed (30-33). These rules were part and parcel of each contract. *Wilhite* v. *Houston,* 200 Fed. 390 (C. C. A. 8); *Clews* v. *Jamieson,* 182 U. S. 461, 45 L. Ed. 1183; *Gettys* v. *Newburger,* 272 Fed. 209 (C. C. A. 8). When, therefore, defendants declared their intent not to take or deliver the grain, but to "get out" of that obligation by an

offsetting purchase or sale before delivery date, and when it appears that in every one of these transactions that is exactly what they did, the conclusion inevitably follows that they were proceeding in accordance with and not in disregard of their agreements. *Gettys* v. *Newburger, supra.* Even if their alleged arrangement with plaintiff's local agent at Carrollton had been to disregard their written agreements, and to make "bets" with plaintiff at Carrollton, the actual execution of binding contracts for them in every instance is conclusive that their unlawful intent was never carried out. Moreover, since McDonough had no authority to make contracts for plaintiff, it would seem to follow he had no authority to waive their provisions or change them.

Defendants rely on *State* v. *Christopher,* 318 Mo. 225, and contend that on facts substantially the same as those here, Christopher's conviction of a violation of the Missouri Bucket Shop Law was upheld. An examination of the facts *as found* by the Missouri Court reveals that Christopher was conducting a place in Sedalia, Missouri, where *pretended* sales on the Grain Exchanges of the country were permitted. The court there said (318 Mo., l. c. 237):

> "We take it, therefore, that the customers of the defendant bought in the manner described, in Sedalia, in violation of the statute; that actual buying and selling which he permitted and conducted did not take place on the Board of Trade of Kansas City or that of Chicago. That may have an important bearing as we examine the facts.
>
> It must be borne in mind that the Missouri statute does not forbid, nor does the indictment charge, the making or negotiation of sales or contracts, illegal or otherwise. Defendant is charged with keeping a place where he permits gambling in

common law. At common law a contract, which upon its face appears to be legitimate, cannot be declared void as a wagering contract upon proof that one only of the parties thereto knew and meant it to be such. Therefore, the arrangement for the purchase of the stocks in question, being legitimate upon its face, cannot be held void as a gambling contract in the absence of proof that both parties knew and understood that they were purchased for defendant upon margins, or upon the rise or fall of the stocks in the market."

In this Missouri case a broker was seeking to recover his commissions and advances. Plaintiff had purchased stocks for defendant on the New York Stock Exchange. On the trial the defendant contended and testified that he had no intention of taking the stocks and that plaintiff knew it. He offered no proof of a similar intent in the opposite parties to such contracts. In upholding a recovery for plaintiff, the Missouri Supreme Court (160 Mo., l. c. 524) approved this declaration of law:

> "'It must be shown by the preponderance of evidence that both defendant and the parties from whom plaintiff purchased said shares of stock intended there should be no delivery and that plaintiff so understood the matter at the time. In other words, it must appear from the evidence that the seller and the purchaser and the plaintiff understood it was to be a gambling speculation to be settled only by the payment of difference in the market price and that no shares of stock were expected to be delivered.'"

Other pronouncements of this rule are found in the authorities cited in the second paragraph, page 16, Respondent's Brief.

That defendants deposited margins with plaintiff is no evidence of a gambling intent. *Gettys* v. *Newburger*, 272 Fed. 209, 220. Nor is their testimony that they were not in a position to take or deliver the grain contracted for, where, as here, their declared intent and their act in each transaction were to satisfy their contracts by offsetting sales or purchases before delivery date. *Board of Trade* v. *Christie*, 198 U. S. 236, 248, 249.

The evidence is affirmative and there was none to the contrary, that in all of the purchases and sales on the Grain Exchanges of Chicago and Minneapolis that Section 4-(b) of the Federal Grain Futures Act was complied with in all respects (61-62, 75-79, 80-81, 90-95, 134-135). The sum of the matter then is that all of these contracts entered into by the defendants were valid at common law and the general law of the land; all were executed and performed without the State of Missouri; none have been declared unlawful by the Grain Futures Act. They stand sanctioned by the applicable law—the common law—whether or not Congress by the Federal enactment had entered and appropriated the field.

## II.

**The Contracts in Question, Executed by Plaintiff as Broker for and in Behalf of Defendants Upon Officially Designated Contract Markets, Are Valid and Enforceable Under the Federal Grain Futures Act.**

For the purpose of this discussion, we assume as sound that which we deny—that the Missouri Legislature lawfully may and has declared that the typical futures transaction initiated by an order in Missouri but executed beyond its borders is nevertheless a Missouri

transaction, is a mere pretense and void in that State. The question is, has the Grain Futures Act superseded those Statutes in their application to the transactions in the instant case?

The Eighth Circuit in the case at bar, 56 Fed. (2d) 525, the Tenth Circuit in *Lyons Milling Co.* v. *Goffe & Carkener*, 46 Fed. (2d) 241, the Supreme Court of Kansas in *State ex rel.* v. *Rosenbaum Grain Co.*, 115 Kan. 40, and *Goffe & Carkener* v. *Henneberger*, 132 Kan. 211, and the Western District of Missouri in *Board of Trade* v. *Gentry, Attorney General* (a three judge decison, not officially reported, but copied as an appendix here) have answered the question in the affirmative. The Christopher case in Missouri, and King v. Horton in Ohio, contain language pointing to an opposite conclusion. The precise question here involved has not, we believe, been determined by this court. If the Missouri Statutes have been superseded it is because (1) Transactions in futures on Grain Exchanges so directly affect interstate commerce in grain that they are an integral part of such commerce and, therefore, subject to Federal regulation and control under the Commerce Clause (2) Congress has entered and appropriated the field (3) The Grain Futures Act has pronounced these contracts valid when executed in conformity with the Act; or at least preserved to them their validity at common law.

(1) Congress from the evidence before it had the power to find and declare that these transactions so directly affect interstate commerce as to become a part of it and, therefore, subject to Federal regulation and control. Their relation to and effect on interstate commerce, considered at great length in hearings when the Act was under consideration, were summarized in Sec-

tion 3 * of the Grain Futures Act, and fully considered in the opinion of this court upholding it as valid. *Board of Trade* v. *Olsen,* 262 U. S. 1, 67 L. Ed. 839. The growth and development of business and business methods have broadened the legal conception of interstate commerce to include those intrastate transactions which are a necessary incident to and therefore really a part of that commerce. In holding that these transactions in futures were of that class, this Court said in *Board of Trade* v. *Olsen, supra*:

> "This case was but the necessary consequence of the conclusions reached in the case of *Swift & Co.* v. *United States,* 196 U. S. 375, 49 L. Ed. 518, 25 Sup. Ct. Rep. 276. That case was a milestone in the interpretation of the commerce clause of the Constitution. It recognized the great changes and development in the business of this vast country, and drew again the dividing line between interstate and intrastate commerce where the Constitution intended it to be. It refused to permit local incidents of great interstate movement, which, taken alone, were intrastate, to characterize the movement as such. The Swift Case merely fitted the commerce clause to the real and practical essence of modern

* Sec. 3. "Transactions in grain involving the sale thereof for future delivery as commonly conducted on boards of trade and known as 'futures' are affected with a national public interest; that such transactions are carried on in large volume by the public generally and by persons engaged in the business of buying and selling grain and the products and by-products thereof in interstate commerce; that the prices involved in such transactions are generally quoted and disseminated throughout the United States and in foreign countries as a basis for determining the prices to the producer and the consumer of grain and the products and by-products thereof and to facilitate the movements thereof in interstate commerce; that such transactions are utilized by shippers, dealers, millers, and others engaged in handling grain and the products and by-products therein in interstate commerce as a means of hedging themselves against possible loss through fluctuations in price; that the transactions and prices of grain on such boards of trade are susceptible to speculation, manipulation, and control, and sudden or unreasonable fluctuations in the prices thereof frequently occur as a result of such speculation, manipulation, or control, which are detrimental to the producer or the consumer and the persons handling grain and products and by-products thereof in interstate commerce, and that such fluctuations in prices are an obstruction to and a burden upon interstate commerce in grain and the products and by-products thereof and render regulation imperative for the protection of such commerce and the national public interest therein."

business growth. It applies to the case before us just as it did in Stafford v. Wallace."

See also *Stafford* v. *Wallace*, 258 U. S. 495, 66 L. Ed. 735; *Swift & Co.* v. *United States*, 196 U. S. 375, 49 L. Ed. 518; *United States* v. *Ferger*, 250 U. S. 199, 63 L. Ed. 936.

By these rulings and the declarations in the Act itself, dealings in futures are no longer intrastate but interstate transactions, having an important bearing and carrying an important part in the current of commerce of the nation in grain. The power to regulate interstate commerce includes the right to regulate transactions in grain futures which Congress has found and this court has declared to be a part of that commerce.

(2) How far Congress has entered the field previously occupied by State legislation depends upon the purpose of the Act and the scope of its provisions. The purpose, as its title discloses, was to regulate transactions on Grain Future Exchanges and prevent unlawful manipulation and control. It deals primarily with those transactions in grain futures which do not result in the delivery of the grain, but which are satisfied by offset. Mr. Chief Justice Taft, who wrote the opinion of this court upholding the Act, said of it (262 U. S. 1, 36):

> "It is not the sales and deliveries of the actual grain which are the chief subject of the supervision of Federal agency by Congress in the Grain Futures Act * * *. It is the contracts of sales of grain for future delivery, most of which do not result in actual delivery, but are settled by offsetting them with other contracts of the same kind, or by what is called 'ringing.' *Board of Trade* v. *Christie Grain & Stock Co.*, 198 U. S. 236, 246, 247, 49 L. Ed. 1031, 1037, 1038, 25 Sup. Ct. Rep. 637."

The only means by which this could be accomplished was for Congress to take over completely to itself and to the Federal Government the power and right to regulate *all transactions in futures on Grain Exchanges throughout the United States.* It adopted that means. The idea expressed in the opinions of the Missouri and Ohio courts that Congress undertook to regulate these contracts only on Federal contract markets, proceeds upon an entire misapprehension of the provisions of the Act itself. By Section 4 * it is made unlawful (among other things) to execute futures contracts which (as Section 3 declares they do) are *or may be* used for hedging purposes in interstate commerce or for determining the price basis of any transaction in interstate commerce, unless the seller at the time the contract is executed is the actual or potential owner of the grain, or unless such contract is made by or through a member of a Board of Trade which has been designated by the Secretary of Agriculture as a contract market.

In other words, Congress has prescribed that these transactions shall be conducted only on Federal con-

---

Sec. 4. It shall be unlawful for any person to deliver for transmission through the mails or in interstate commerce by telegraph, telephone, wireless, or other means of communication any offer to make or execute, or any confirmation of the execution of, or any quotation or report of the price of, any contract of sale of grain for future delivery on or subject to the rules of any board of trade in the United States, or for any person to make or execute such contract of sale, which is or may be used for (a) hedging any transaction in interstate commerce in grain or the products or by-products thereof, or (b) determining the price basis of any such transaction in interstate commerce, or (c) delivering grain sold, shipped, or received in interstate commerce for the fulfillment thereof, except—

(a) Where the seller is at the time of the making of such contract the owner of the actual physical property covered thereby, or is the grower thereof, or in case either party to the contract is the owner or renter of land on which the same is to be grown, or is an association of such owners, or growers of grain, or of such owners or renters of land; or

(b) Where such contract is made by or through a member of a board of trade which has been designated by the Secretary of Agriculture as a "contract market," as hereinafter provided, and if such contract is evidenced by a record in writing which shows the date, the parties to such contract and their addresses, the property covered and its price, and the terms of delivery: Provided, That each board member shall keep such record for a period of three years from the date thereof, or for a longer period if the Secretary of Agriculture shall so direct, which record shall at all times be open to the inspection of any representative of the United States Department of Agriculture or the United States Department of Justice.

tract markets and by and between clearing members thereof, and has forbidden as unlawful all such transactions on any other Grain Exchange in the United States. If this construction is correct, then the completeness with which Congress has entered and appropriated the field is at once apparent. By the laws of many of the states and by the common law of the land, dealings in futures wherein the parties contemplate offsetting purchases and sales rather than actual delivery of the grain, are valid. But Congress, upon the predicate of the national public welfare and in the exercise of its police power over the interstate commerce of the nation, has found and declared that such contracts shall be made only on the floors of a few of the great national marketing places of the nation, and under the supervision and control of a Federal Department. The Act has gone further (Section 4) by inhibiting the initial steps leading to the execution of those contracts, by forbidding the transmission through the mails or by interstate telegraph, telephone or other means of an offer to execute such a contract or confirmation of its execution or a quotation of such transaction, unless it relates to a contract executed on a contract market in the manner prescribed. A system of regulation, comprehensive and complete, governing all such transactions conducted on contract markets is prescribed. The Act did not stop there. It gave over to the Federal Department of Agriculture complete supervision of the exchanges themselves. No Grain Exchange in the country may permit these transactions unless it is a contract market. No such exchange may become or continue to function as a contract market without the consent of the Secretary of Agriculture. He may suspend or debar it from operation. He may and has prescribed regulations for

their operation. The jurisdiction of the Agricultural Department extends to the members of these exchanges. The rulings of the Department and the conduct of the exchanges and of its members are subject to direct review by the Federal Courts. In fine, Congress, finding that the nationwide practice of dealing in futures as commonly conducted on Boards of Trade by the public generally, directly affects interstate commerce and is affected with a national public interest, has placed the persons dealing in them, their contracts, the steps leading to their execution, their execution and the places where they are executed under Federal sovereignty and control. If this power has been constitutionally exercised under the Commerce Clause, then it is certain that the infinite variety of State regulation dealing with the same subject has been suspended.

In *Western Union Telegraph Co.* v. *Boegli*, 251 U. S. 315, 64 L. Ed. 281, this court said:

> "As the result of doing so, we are of opinion that the provisions of the statute bringing telegraph companies under the Act to Regulate Commerce, as well as placing them under the administrative control of the Interstate Commerce Commission, so clearly establish the purpose of Congress to subject such companies to a uniform national rule as to cause it to be certain that there was no room thereafter for the exercise by the several states of power to regulate, by penalizing the negligent failure to deliver promptly an interstate telegram, and that the court below erred, therefore, in imposing the penalty fixed by the state statute."

In *Pennsylvania Railroad* v. *Public Service Commission of Pennsylvania*, 250 U. S. 566, 63 L. Ed. 1142,

the Public Service Commission of Pennsylvania made regulations concerning the size of rear platforms of cars on all trains moving in the state. The Interstate Commerce Commission has made similar regulations covering the same subject, but which were different from those of the state. This court said:

> "The subject-matter in this instance is peculiarly one that calls for uniform law, and in our opinion, regulation by the paramount authority has gone so far that the statute of Pennsylvania cannot impose the additional obligation in issue here."

*United States* v. *Hill,* 248 U. S. 420, 63 L. Ed. 337. In this case Congress passed an Act forbidding the transportation of intoxicating liquor into a state where the manufacture or sale of such liquor for beverage purposes was permitted. By the particular state law, it was not unlawful for an individual to bring liquor into the state for personal consumption. Hill carried a quart of liquor on his own person from Kentucky to West Virginia on an interstate interurban car. He was convicted of violating the Federal Act notwithstanding the state legislation into which the liquor was brought permitted his act. The court said (l. c. 425, 340):

> "Congress may exercise this authority in aid of the policy of the state, if it sees fit to do so. It is equally clear that the policy of Congress, acting independently of the states, may induce legislation without reference to the particular policy or law of any given state. Acting within the authority conferred by the Constitution, it is for Congress to determine what legislation will attain its purposes. The control of Congress over interstate commerce is not to be limited by state laws. Congress, and not the states, is given the authority to regulate inter-

state commerce. When Congress acts, keeping within the authority committed to it, its laws become by the terms of the Constitution itself the supreme laws of the land. 'This is not to say that the nation may deal with the internal concerns of the state, as such, but that the execution by Congress of its constitutional power to regulate interstate commerce is not limited by the fact that intrastate transactions may have become so interwoven therewith that the effective government of the former incidentally controls the latter. This conclusion necessarily results from the supremacy of the national power within its appointed sphere.' Minnesota Rate Cases (*Simpson* v. *Shepard*) 230 U. S. 352, 399, 57 L. Ed. 1511, 1541, 48 L. R. A. (N. S.) 1151, 33 Sup. Ct. Rep. 729, Ann. Cas. 1916A, 18, and previous decisions of this court therein cited. * * * (341) When Congress exerts its authority in a matter within its control, state laws must give way, in view of the regulation of the subject-matter by the superior power conferred by the Constitution."

See also *Napier* v. *Atlantic Coast Line*, 272 U. S. 605, 71 L. Ed. 432.

It cannot be that these transactions continue to be subject to the varying public policies of the states. There is no such thing in our law as divided control over interstate commerce, once Congress has spoken. The famous language of *Gibbons* v. *Ogden*, 9 Wheat. 1, 6 L. Ed. 23 is apropos. In his concurring opinion, Mr. Justice Johnson said of the power to regulate commerce:

"* * * It can reside in but one potentate; and hence the grant of this power carries with it the whole subject, leaving nothing for the states to act upon."

In Section 3 of the Grain Futures Act, Congress on proof before it, found that transactions in futures as commonly conducted on Boards of Trade are carried on in large volume by the public generally and by persons engaged in buying and selling grain in interstate commerce; that the prices involved are generally quoted and disseminated throughout the United States and in foreign countries as a basis for determining the price of grain moving in interstate commerce, and to facilitate such movements; that they are utilized by shippers, dealers, millers and others engaged in handling grain in interstate commerce as a means of hedging themselves against possible loss through fluctuations in price. It also found that such transactions could be and sometimes were used for the sinister purpose of unduly inflating or depressing prices, and declared all such transactions unlawful unless executed on a contract market designated as such by the Secretary of Agriculture. The State of Missouri has provided that no transactions for the sale of grain for future delivery shall be valid unless both parties to that agreement contract and intend that it shall terminate in an actual delivery of the grain. The Missouri legislation and the Congressional Act cover precisely the same field and are in conflict. Both cannot prevail. That open conflict touches the vitals of this case. The Federal Act recognized and said that these transactions perform a useful function in our national commercial life, but that they also may be productive of evil to the nation's commerce. And it proclaimed a national public policy which was to permit them but to restrict their operation to a few exchanges which would be under the supervision and control of the Federal government. The Missouri Statute calls them fictitious transactions and forbids them altogether, de-

clares them invalid. Congress could have forbidden them. And if from the evidence before it, the conclusion had been reached that they were detrimental to the commerce of the nation in grain, such a finding would have been in Section 3 and they could and would have been prohibited. But the finding was in effect that, when properly carried on, they are as direct a benefit to interstate commerce as unlawful practices in their use are a burden. These recitals in Section 3 were neither a Congressional fiat, as so characterized by the Missouri Court, nor a mere political declaration as defined by the Ohio Court. They were of that degree of importance and reality that on them rested the constitutionality of the Act itself. *Board of Trade* v. *Olsen,* 262 U. S. 1; *Hill* v. *Wallace,* 259 U. S. 44. Those same findings removed them from the field of state regulation into the realm of the commerce of the nation where they belong. They are the result of years of study and investigation. They represent and declare an uniform national public policy concerning transactions in grain futures. No one can read Section 3 and continue to believe that Congress regarded them as other than lawful transactions when properly conducted. Nor can Section 4 be read and the conclusion be escaped that Congress intended to and did draw them into the exclusive dominion of Federal rule.

In the debates before the House, Mr. Tincher, one of the authors of the bill said (Congressional Record, June 26, 1922, 9404):

> "There is a legitimate trade in the sale of wheat for future delivery, and there is a legitimate trade in hedging, and the legitimate ends of the grain trade are not opposed to having the manipulation put out of the market."

Mr. Wells of the Minneapolis Board of Trade, appearing before the House Committee on Agriculture, considering the Grain Futures Act, said:

> "Future trading to be of any benefit and have any economic value requires a volume of trade. It requires the presence in the market of individuals, traders, other than those who are directly and constantly engaged in the handling of grain. Unwittingly, very likely, but actually those traders take the part of underwriters. They underwrite the risk of fluctuation in price."

Their economic value and commercial usefulness in interstate commerce in grain are recognized by Mr. Justice Holmes in *Board of Trade* v. *Christie,* 198 U. S. 236. Speculation in grain futures may offend the moral sense of some. Nevertheless, it is no longer open to debate that they tend to equalize prices, afford a cushioning influence on rapid price fluctuations, sometimes avoid, or at least mitigate catastrophies, enable the miller, the storer of grain, the exporter and even the farmer to escape completely the hazard of future price fluctuations. This is accomplished by hedging, which would not be possible except for the huge volume of trades in futures as commonly carried on by the public generally on grain exchanges. They make a broad, liquid market, a market for all grain. They insure uniformity in price throughout the Union.

In the *Christie Grain Case,* 198 U. S. 236, 247, 248, 49 L. Ed. 1031, 1038, Mr. Justice Holmes said:

> "People will endeavor to forecast the future, and to make agreements according to their prophecy. Speculation of this kind by competent men is

the self-adjustment of society to the probable. Its value is well known as a means of avoiding or mitigating catastrophes, equalizing prices, and providing for periods of want. It is true that the success of the strong induces imitation by the weak, and that incompetent persons bring themselves to ruin by undertaking to speculate in their turn. But legislatures and courts generally have recognized that the natural evolutions of a complex society are to be touched only with a very cautious hand, and that such coarse attempts at a remedy for the waste incident to every social function as a simple prohibition and laws to stop its being are harmful and vain."

The testimony of Mr. Griffin, President of the Chicago Board of Trade, given in hearings before the joint committees of the House and Senate, when the Act was under consideration, is copied into the record in this case (128-129). He said:

"Sometimes the word 'speculator' is used in a sinister sense—as the equivalent of 'gambler.' This is incorrect. The distinction between gambling and speculation is recognized by all economists and equally by all thoughtful persons. The risks of a speculator are those which are inevitably incident to the ownership of property. The gains and losses of a speculator are those which are incident to actual changes of value. On the other hand, the risks of a gambler are incident to nothing—such risks are purely self-created. The gains and losses of a gambler do not depend on changes of value—the gains of one gambler depend upon nothing except the losses of another."

The purchase and sale of grain for future delivery and the practice of offsetting them before delivery date

by repurchases and resales is a part of our marketing system. The vast volume of these transactions and the fact that the general public of the United States deals in this form of contract, known to the world, was also known to Congress.

Congressman Rainey of Illinois, a member of the House Committee on Agriculture which considered this bill before its passage, said in the Congressional debates (Congressional Record for June 26, 1922, 9410):

> "The present grain marketing system was no sudden invention. It did not come into being all at once; it is the product of evolution, of the irresistible economic law. It represents today the best elements of all the marketing systems of all the ages."

Upon full consideration of the entire situation and of all of the facts, Congress announced a policy of permitting and utilizing these transactions for the good they do, and of regulation for the harm they may do. The problem was legislative and that of the national legislature exclusively. Until Congress otherwise declares, it is not for the courts nor the legislatures of the states to say that they are illegal.

If the Missouri Statutes and the laws of the other states of the Union touching the validity of these transactions continue to govern them, the purpose and entire scheme of the Congressional Act have been frustrated and destroyed. In Illinois (*Board of Trade* v. *Christie*, 198 U. S. 236, 249), and in all states where the common law has not been changed, these contracts are valid. By the Federal Act they and all steps leading to their execution are declared unlawful unless executed on Fed-

eral contract markets, and in conformity with Federal requirements. If the laws of those states have not been superseded, then the avowed and obvious purpose of Congress of restricting them to Federal contract markets has failed of accomplishment. If the Federal regulation and control includes only contract markets, the law is a bootless gesture. If the Act does not supersede the Illinois law as to the validity of these contracts, then the Chicago Board of Trade could completely escape its provisions by the simple expedient of withdrawing as a contract market. It has that right under the express provisions of Section 7 of the Act. On the other hand, if it reaches and supersedes the law and public policies of Illinois and other states in its class, it also displaces and supersedes that of Missouri.

The Board of Trade of Kansas City, a contract market, is next in size and importance to the Chicago Board of Trade. Last year its volume of business in actual grain receipts was greater than that of Chicago. The great volume of futures transactions handled on the Kansas City exchange is used by shippers, growers, producers, millers, elevator operators and others in hedging their contracts against future price fluctuations. The Missouri law is in force on all such contracts executed within its borders even on the Kansas City contract market, it is as much a burden and obstruction to interstate commerce as the unlawful manipulation of futures denounced by the Act itself. In last analysis, these Missouri Statutes nullify the Grain Futures Act in Missouri or the Grain Futures Act nullifies them.

In *Railroad* v. *Hefley*, 158 U. S. 99, this Court said:

> "The carrier cannot obey one statute without sometimes exposing itself to the penalties pre-

Pages 31 & 32 missing



It is too much to contend that such state legislation stands even though it conflicts with the Federal law.

If this Missouri legislation, passed under its police power, is still in force to invalidate these transactions, then the Missouri Legislature and that of any other state can validate them and thereby override the Congressional Act in its entirety.

We address ourselves to the reasoning and conclusions of the Missouri and Ohio Courts in those cases upon which defendants rely. The Missouri Court analyzes the Grain Futures Act in the *Christopher Case*, 318 Mo. 225. It holds (l. c. 243-244) that the Act did not forbid future trading in general and only sought to regulate it on contract markets. Upon that construction the court rested its conclusion that existing State legislation remains unaffected. The language of the Act disproves that construction. Section 4 provides that:

> "It shall be unlawful for any person to deliver * * * (through the mails or by other interstate means) any offer to make or execute, or any confirmation of the execution of * * * any contract of sale of grain for future delivery *on or subject to the rules of any Board of Trade in the United States, or for any person to make or execute such contract of sale,* which is *or may be* used for (a) hedging any transaction in interstate commerce, grain or the products or by-products thereof, or (b) determining the price basis of any such transaction in interstate commerce, or (c) delivering grain sold, shipped, or received in interstate commerce for the fulfilment thereof except— * * * (d) where such contract is made by or through a member of a Board of Trade which has been designated by the Secretary of Agriculture as a 'contract market.'"

Congressman Tincher in presenting the bill to the House was careful to say (Congressional Record, June 26, 1922, p. 9406):

> "Section 4 of the bill deals not only with futures which are, but also with those which may be used in connection with actual transactions in interstate commerce."

The court ruled that the Act reaches and governs only those futures transactions which are used to ship grain from one state to another or to hedge such contracts. It thereby misconceived the entire Act, its findings and its purpose. It is the vast volume of future trading which directly affects actual movements in interstate commerce, which are used to facilitate such movements, the prices and quotations of which influence and fix actual prices of the grain moving in such commerce, that the Act was designed to cover. *Board of Trade* v. *Olsen*, 262 U. S. 1, 36, 67 L. Ed. 839, 850. To hold that the Act singles out for regulation and control only the particular transactions which are so used is to ignore everything that is within the Act and behind its passage. The great volume of future transactions provides the means for hedging. Any one of them may be used for that purpose. If the Missouri Court's construction is sound, then the unlawful manipulation of futures which the Act was designed to prevent may proceed unaffected by it.

The Missouri Court rules that the futures transaction which does not contemplate or result in an actual shipment in interstate commerce is an intrastate transaction and beyond the power of Congress to regulate. In the *Olsen case*, 262 U. S., l. c. 36, 67 L. Ed., l. c. 850, this court said:

"The sales (futures) on the Chicago Board of Trade are just as indispensable to the continuity of the flow of wheat from the West to the mills and distributing points of the East and Europe as are the Chicago sales of cattle to the flow of stock toward the feeding places and slaughter and packing houses of the East.

* * * (39, 851) More than this, prices of grain futures are those upon which an owner and intending seller of cash grain is influenced to sell or not to sell, as they offer a good opportunity to him to hedge comfortably against future fluctuations.

* * * (41, 852) Sales of an article which affect the country-wide price of the article directly affect the country-wide commerce in it. The Board of Trade conducts a business which is affected with a public interest and is, therefore, subject to reasonable regulation in the public interest. The Supreme Court of Illinois has so decided in respect to its publication of market quotations. * * * In view of the actual interstate dealings in cash sales of grain on the exchange, and the effect of the conduct of the sales of futures upon interstate commerce, we find no difficulty under *Munn* v. *Illinois*, 94 U. S. 113, 133, 24 L. Ed. 77, 86, and *Stafford* v. *Wallace*, 258 U. S. 495, 66 L. Ed. 735, 23 A. L. R. 229, 42 Sup. Ct. Rep. 397, in concluding that the Chicago Board of Trade is engaged in a business affected with a public national interest, and is subject to national regulation as such."

The Missouri Court finally narrows the compass of the Act thus (318 Mo., l. c. 246):

"* * * the Act does not regulate, forbid nor make lawful any contract for future deliveries unless the contract is made on a contract market."

The Act declares unlawful every such contract not executed on a contract market. It puts a padlock on every other futures exchange in the country.

The court (244) quotes from Section 4 and concludes that the Act touches and forbids only such offers to execute such contracts and confirmations thereof as are transmitted through the mails or in interstate commerce by telegraph or other means (244). The transactions at bar were initiated and confirmed in that manner. Every order initiated in Carrollton was transmitted by telegraph to Kansas City and immediately relayed by interstate telegraph to Chicago, Minneapolis or Winnipeg. All confirmations were transmitted by United States mail from Kansas City to Carrollton. Thus the Missouri Court concedes that all of the transactions at bar are for these reasons alone, included within the operation of the Federal law and excluded from that of the Missouri Statutes.

The conclusion of the Missouri Court (l. c. 247) is that the effect of the Grain Futures Act is to restrict the operation of state laws so as to make them inapplicable to transactions conducted on a Federal contract market. The transactions at bar fall within that class.

In the concluding paragraph of the opinion, the court deplores the Act which it fears permits speculation in futures to flourish in all of the states and renders powerless the effort of the state to stop them. The answer is that the Federal law has laid a blanket of prohibition over the country by declaring them to be unlawful throughout the Union except where they are carried on at places permitted by and under the supervision of Federal law.

The right to execute these contracts on Federal contract markets is the constitutional right to engage in

interstate commerce which no State statute can forbid or impair.

In the Ohio case, *King* v. *Horton*, 116 Ohio St. 205, 156 N. E. 124, as in the Missouri case, all of the contracts were initiated and concluded within the borders of the state, and counsel conceded that the transactions constituted a violation of the State Bucket Shop Law. In the case at bar, all of them were executed outside of Missouri and our contention has been and is they are not affected by the Missouri Statutes. *Gordon* v. *Welles*, 222 Mo. App. 609, 616; *Claiborne Commission Co.* v. *Stirlen*, (Mo. App.) 262 S. W. 387, 389.

It is to be noted that the Ohio case (156 N. E., l. c. 127) concedes that the Act forbids dealings in futures on all grain exchanges in the country except designated Federal contract markets.

The court found as a fact that the records required by the Act were not made or kept (l. c. 128); and that the contracts were for that reason unenforceable. It was held that the memorandum showing the names of the parties to the contracts, required by the Act, was faulty because the evidence developed that the other names appearing upon the memoranda were those of brokers and agents. Defendants here rely upon this ruling and that of the Missouri Court for their contention that the Act was not complied with in the instant case. The memoranda which plaintiff at bar kept, gave the names and addresses of the clearing member on the other side of the transaction who might be acting for himself or for an undisclosed principal. Both brokers, of course, kept a record of the name and address of the customer for whom they were acting, which could always be had on request. The rules of the respective exchanges and the requirements of Section 4 (b) of the

Act require that all contracts executed on the exchanges shall be made by or through a clearing member. Neither the Act nor the departmental regulations required the brokers to disclose to one another the names of their principals (See Statement of Facts, Respondent's Original Brief, 5-7). The parties to these contracts whose names were required to be recorded were the ones who had the right to make the contracts on the exchanges—its clearing members. In *Thorn* v. *Browne*, 257 Fed. 519 (C. C. A. 8), approved by this court in *Browne* v. *Thorn*, 260 U. S. 137, 67 L. Ed. 171, Judge Sanborn said (l. c. 525):

> "Counsel for the defendant urges other, but less serious, objections to the slips which were offered in evidence. He contends that they are insufficient under the Cotton Futures Act: * * * (2) Because the names and addresses of the buyers and sellers are not set forth in the slips, but the buyers and sellers in the contracts under consideration were the New Orleans brokers, whose names and addresses appear on the slips. None but members of the Cotton Exchange could buy or sell cotton futures thereon. The statement of their names and addresses was no less a compliance with the statutes because they bought or sold for undisclosed principals, and the statute nowhere requires the disclosure in the contracts of the names or addresses not disclosed to opposing parties of the principals or others for whom the brokers make contracts the burden of which they personally assume."

Nevertheless, in the case at bar, the records of both brokers in whose names the contracts were executed, showed the names and addresses of their principals. The Act does not require that the broker furnish

his customer with the name of the other broker or his principal. That information is for the Secretary of Agriculture and the record here shows that the requirements of the Act and the regulations of the Departments and the rules of the Exchanges were strictly observed in each instance (See Statement of Facts, Original Brief, 5-7).

The opinion holds (128) that since the contracts executed for the customers were carried in the names of their brokers on the Exchange that the parties were merely dealing in margins, that is, that the ordinary futures transactions executed on an exchange through broker members satisfied by offsetting purchases and sales in the same manner are mere pretended transactions. With this conclusion, this court does not agree (Authorities, pp. 15-16, Respondent's Original Brief). It is also ruled that futures transactions are no part of interstate commerce, and that Congress may not arbitrarily so declare (129), that (128) the findings and declarations of Section 3 are "purely political and in no sense legislative," that "those declarations add nothing to the Act * * *." The ruling of the Olsen case is to the contrary. As in the Missouri case, the court found also (129) that the plaintiff broker, King & Company, took the other end of the deal and expected to profit by its own customer's loss.

In the end, the expressed views of the Missouri and Ohio Courts on the Grain Futures Act are in the nature of *dicta,* for the decisions actually rested upon findings that the broker and customer were betting with each other, that the broker expected to profit by his customer's loss, and that the Grain Futures Act was not complied with.

Defendants contend (Supp. Brf. 42-43) that the Grain Futures Act declared unlawful the contracts executed on the Winnipeg Exchange. Obviously, neither the Grain Futures Act nor the Missouri statutes could affect the validity of those transactions. Defendants offered no proof that they were invalid under the Canadian law, and the burden was of course on them (Resp. Orig. Brf. 14).

The contention that plaintiff did not segregate the Winnipeg items from the others wrongfully assumes that the burden rested upon plaintiff to prove that they were not invalid. Defendants alleged that all were invalid, and the burden to prove that charge never shifted. *Hoyt* v. *Wickham*, 25 Fed. (2d) 777, 780.

(3) If, since the passage of the Grain Futures Act, the Missouri Statutes no longer apply so as to invalidate futures contracts executed on Federal contract markets, in conformity with Federal law, it is immaterial whether the Federal Act expressly or impliedly declares such transactions valid. They are valid by the common law, and even under the Missouri law, except as they may be invalidated by the Statutes. However, since Congress has expressly declared that all of these transactions are unlawful unless executed on a Federal contract market and in compliance with Federal law, it must follow that contracts executed in conformity with the Statutes are valid by virtue of this very declaration in the Act itself. Putting the language of the Act conversely, it at least declares this much: It is lawful to execute a futures contract by or through a member of an exchange which is a contract market, if it is executed in compliance with the Federal law.

That language is a license to execute such contracts under certain conditions. It is incredible that Congress

intended that any State Statute can continue to forbid that which Congress within its power has expressly permitted.

The Act recognized the use and value of futures to interstate commerce. That recognition carried the plain inference that they were regarded as lawful. The fact that Congress regulated rather than forbade them is persuasive of that intent. The fact that the regulation encompasses and includes every futures exchange in the United States, by forbidding the execution of any such contracts other than on contract markets, and the completeness with which Congress took over the regulation not alone of the contracts themselves, but also of the exchanges and the members thereof, precludes the idea that they were to remain valid or not as the law of the particular state provided.

In the court below, Judge Gardner said (192):

> "It was manifestly the intention of Congress to legitimatize and make lawful transactions, dealings, and contracts in grain futures in which the provisions of this Act were complied with. Having made it unlawful for any person to engage in such transactions unless within the exceptions specified, it seems necessarily to follow that where the transaction comes within the exceptions specified, and has met and complied with all the requirements provided in the statute, such transactions are valid."

In *State ex rel.* v. *Rosenbaum Grain Co.*, 115 Kan. 40, 48, the court said:

> "The grain futures act does not prohibit speculation. It recognizes speculation as lawful, and one of the patent purposes of the act was to protect,

as an insurance expedient, that form of speculation known as hedging."

Whether the Act expressly or impliedly declares these transactions to be lawful when executed on contract markets, it appears certain that it recognized them as valid. It would not have permitted that which it regarded as unlawful. It may also be assumed that Congress knew when the Act was passed that this court had expressly held in the Christie Grain Case that the ordinary futures transaction, which is satisfied by offset or counter-purchase and sale, is valid. It was therefore entirely unnecessary again to proclaim that which had already been decided and settled by the Supreme Court of the United States. The language of the Act which declared these transactions into the field of interstate commerce, subjected them to Federal law. This also, Congress knew. Under that law, and the common law of the land, they are valid.

From the foregoing contentions, it is respectfully submitted that the findings and decision of the learned Court of Appeals are correct, and that plaintiff was rightfully adjudged to be entitled to recover.

Respectfully submitted,

I. P. Ryland,
Arthur Mag,
Roy B. Thomson,
Alfred M. Seddon,
Paul R. Stinson,
*Counsel for Respondent,*
*Uhlmann Grain Company.*

Ryland, Stinson, Mag & Thomson,
*Of Counsel.*

## APPENDIX.

### IN THE DISTRICT COURT OF THE UNITED STATES.

For the Western Division of the Western District of Missouri.

---

BOARD OF TRADE, *et al.*,

*Plaintiffs,*

v. In Equity No. 714

NORTH T. GENTRY, *et al.*,

*Respondents.*

---

[Before Van Valkenburgh, Circuit Judge and Otis and Reeves, District Judges]

---

### MEMORANDUM OPINION.

*Per Curiam*:

The Supreme Court in *Stafford* v. *Wallace*, 258 U. S. 495, has announced:

> "Commerce among the states is not a technical legal conception but a practical one, drawn from the course of business. (*Swift & Co.* v. *United States*, 196 U. S. 375.)
>
> "Streams of commerce among the states are under the national protection and regulation including subordinate activities and facilities which are essential to such movements though not of interstate character when viewed apart from them."

This doctrine, applicable to stock yards and live stock dealers, has been extended to dealing in grain

by the Grain Futures Act and has been so characterized in *Chicago Board of Trade* v. *Olsen,* 262 U. S. 1, the court holding that such dealings are susceptible to speculation, manipulation and control affecting cash prices and consignments "is such as to cause a direct burden on the interference with interstate commerce therein rendering regulation imperative for the protection of such commerce and the national public interest therein," and, therefore, Congress "had power to provide in the Grain Futures Act for placing grain boards of trade under federal supervision and regulation as 'contract markets', as a condition to dealing by their members in contracts for future delivery."

Pursuant to the provisions of the Act, and of this interpretation thereof, the Kansas City Board of Trade has been designated as a contract market; and, therefore, all transactions therein concerning trading in grain futures have been placed under the regulation and control of Congress; in other words, the United States, through Congress, has entered and appropriated this field.

This being so, the entire subject-matter has been entirely removed from state regulation and control, and this means, of course, in every particular and aspect. Prior to the passage of the Grain Futures Act the matter involved in the Missouri statute was admittedly within state control and this act was, therefore, expressly upheld in *State* v. *Brodnax,* 228 Mo. 25, and by the Supreme Court under the same title in 219 U. S. 285. The passage of the Grain Futures Act however, entirely changed the situation. This principle is distinctly recognized in *State* v. *Railroad,* 212 Mo. 658. The only question deserving consideration is whether the Missouri Act complained of is a regulatory act distinct from a

mere incidental exercise of the police power without such attribute. The Supreme Court of Missouri in *State* v. *Brodnax, et al., supra,* distinctly recognizes it as such. Furthermore, the act itself, in terms, undertakes to prescribe certain requirements of the board in the matter of keeping of records, forbidding the keeping of any such place of exchange unless such requirements are met; the written or printed memoranda of sale directed to be issued being subject to a stamp tax of twenty-five cents each. Substantially similar records are required to be kept by the Federal Act. The Missouri statute can not be viewed exclusively as imposing an excise or occupation tax because it does not affect the entire range of activities of the Board of Trade; it merely pertains to grain futures—those transactions over which Congress has assumed supervision and control; but if viewed as an excise or stamp tax as a prerequisite to or privilege of engaging in such operations, or any other operations within the purview of federal legislation, it would, of course be equally objectionable. Such Board of Trade cannot have a dual or divided regulation even though the two are not in terms necessarily inconsistent and conflicting. However, as said by counsel for complainants:

> "Where Congress, pursuant to its power to regulate commerce, has authorized a particular act or occupation, the states may not thereafter impose conditions to the exercise of the act or occupation which Congress has authorized. Thus, where Congress has authorized a particular occupation, the states may neither prohibit, tax, nor otherwise regulate such occupation."

The situation is the same where Congress has substantially entered and appropriated a field theretofore

controlled by the state. The decisions of the Missouri and Kansas courts are in harmony with these conclusions.

*Brodnax* v. *Missouri*, 228 Mo. 25;
*Sells* v. *Railroad*, 266 Mo. 155-184;
*State of Kansas, ex rel.* v. *Rosenbaum Grain Co., et al.*, 115 Kans. 40.

The result, in our judgment, is that the temporary injunction should go, as prayed, in conformity with the general provisions of the preliminary order of Judge Reeves; the same to remain in effect until the further order of the court.

FILE COPY

FILED
MAR 1 1933
CHARLES ELMORE CROPLEY

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1932

No. 63

A. P. DICKSON, et al, *Petitioners*,
Vs.
UHLMANN GRAIN COMPANY, a corporation, *Respondent*.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Eighth Circuit

## PETITION FOR REHEARING

I. P. RYLAND,
ARTHUR MAG,
ROY B. THOMSON,
ALFRED M. SEDDON,
PAUL R. STINSON,

*Counsel for Respondent, Uhlmann Grain Company.*

RYLAND, STINSON, MAG & THOMSON,
*Of Counsel.*

## SUBJECT INDEX


| | | Page |
|---|---|---|
| I | There was no evidence that defendants' understanding differed from the agreements as actually executed | 2 |
| II | The circumstances, held sufficient to warrant the conclusion that plaintiff was conducting a bucket shop and permitting defendants to enter into mere wagering contracts, were wholly without probative force in view of the record | 4 |
| III | The conclusion that plaintiff entered into actual contracts on the exchanges as a device to enable defendants to gamble overlooks and is contrary to the record facts and the applicable law | 6 |
| IV | McDonough's authority | 8 |
| V | The Grain Futures Act | 9 |
| | Conclusion | 11 |


## TABLE OF CASES CITED


Anthony v. Jasper County, 101 U. S. 693, 699 ..... 9
Board of Trade v. Christie, 198 U. S. 236 ..... 5, 11
Bullen v. Wisconsin, 240 U. S. 625, 630 ..... 6
Call v. Palmer, 116 U. S. 98, 102 ..... 9
Clews v. Jamieson, 182 U. S. 461 ..... 5, 6, 7, 11
Harvey v. Merrill, 150 Mass. 1 ..... 11
Iowa Bridge Co. v. Comm'r. (C.C.A.) 39 Fed. (2d) 777, 781 ..... 6
Mecom v. Fitzsimmons Drilling Co., 284 U. S. 183, 188-190, 76 L. Ed. 233, 238-239 ..... 6
United States v. Isham, 17 Wall. 496 ..... 6


## TEXT BOOKS CITED


2 Corpus Juris, pp. 563, 564, 645, 646 ..... 8


## STATUTES CITED


Revised Statutes Missouri, 1929, Section 4324 ..... 10

# SUPREME COURT OF THE UNITED STATES

---

No. 63

---

A. P. DICKSON, et al, *Petitioners*,
Vs.
UHLMANN GRAIN COMPANY, a corporation, *Respondent*.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Eighth Circuit

---

## PETITION FOR REHEARING

Respondent respectfully enters its protest against the fact findings and opinion of the learned majority. It urges reconsideration and rehearing upon the ground that the approved findings of the trial court are conclusively shown to be unfounded, both by uncontested record facts, and by those held in the opinion to be without dispute.

## I.

### THERE WAS NO EVIDENCE THAT DEFENDANTS' UNDERSTANDING DIFFERED FROM THE AGREEMENTS AS ACTUALLY EXECUTED.

The majority opinion finds that the transactions on the exchanges were real and valid, but that there was evidence that Dickson's contracts with McDonough at Carrollton did not contemplate the actual execution of such agreements in Dickson's behalf (op. 4). His own testimony is that they did (R. '51-152):

> "Q. Did you understand that the Uhlmann Grain Company was to execute your orders for you? A. Yes, sir.
>
> Q. And act as your agent? A. Yes, sir.
>
> Q. In making these purchases? A. Yes, sir.
>
> Q. Either in Winnipeg or in Chicago, or both? A. Yes, sir.
>
> Q. And that these transactions were to be consummated on those markets; you understood that, Mr. Dickson? A. Yes, sir.
>
> Q. Then you understood that the contract to sell was the contract whereby the Uhlmann Grain Company, acting for you, agreed that during a certain month in the future that you would sell so many bushels of wheat? A. Yes, sir.
>
> Q. On this market? A. Yes, sir."

The opinion's partial recognition of this testimony (5)—

> "The defendants undoubtedly knew that the company regularly entered into contracts on the ex-

> changes corresponding to the transactions at Carrollton."—

disposes of it no more than if not mentioned at all. If the statement in Mr. Justice Butler's dissenting opinion (3)—

> "Defendants admit that they intended the orders to be executed on the exchanges, that they were so executed, and that the accounts are correct."—

reflects the record, and it does, then convincing reason appears for a re-argument of this cause. It shows that the sole question propounded by the majority opinion (4), "Whether the customer, in his agreement with the company, ordered that contracts be entered into in his behalf on the exchange," was resolved in the negative on the mistaken assumption that the *facts* raised an issue which was never in the case.

The evidence, and there was none contrary, was controlling. It was conclusive upon Dickson and his co-defendants (he testified for all) that they engaged plaintiff as broker to do precisely what it did do in every transaction—go upon exchanges and execute actual contracts for them. It completely disposes of every circumstance alluded to in the opinion as indicative of mere bucket shop transactions between McDonough and the defendants. It definitely establishes as incorrect the conclusion that the dealings between defendants and plaintiff began and ended at Carrollton, even in the minds of defendants.

Nor was this testimony of Dickson mere inconsistency with his direct examination. While he did testify to an understanding with McDonough that there was to be no delivery, that evidence was qualified by the statement that he was to "get out" of making or taking delivery of the grain by offsetting purchases and sales before delivery was

required under the contracts (R. 152, 156, 157); and that all initiating and offsetting purchases and sales (except the last transaction (R. 150) in November (R. 163) were executed at his direction or with his sanction (R. 154). Thus the conclusion that the transactions between defendants and McDonough were mere wagering contracts, bucket shop dealings, overlooks uncontested record facts and goes beyond the limits of defendants' testimonial claims.

## II.

### THE CIRCUMSTANCES, HELD SUFFICIENT TO WARRANT THE CONCLUSION THAT PLAINTIFF WAS CONDUCTING A BUCKET SHOP AND PERMITTING DEFENDANTS TO ENTER INTO MERE WAGERING CONTRACTS, WERE WHOLLY WITHOUT PROBATIVE FORCE IN VIEW OF THE RECORD.

Notwithstanding the undisputed fact, including the testimony of defendants themselves, that actual orders were intended to be and were given, followed by the execution of valid contracts outside of Missouri, the majority opinion rests its contrary finding upon certain circumstances held established: that no grain was actually delivered, that defendants put up margins, that their obligations exceeded their financial capacity, that the Carrollton office of plaintiff had furnishings in it characteristic of a bucket shop, that McDonough solicited orders, that defendants were not in the grain business, that more grain was contracted for than defendants could possibly take or deliver, and finally, that Carrollton was a small city.

If defendants had asserted an agreement or under-

standing not to execute bona fide contracts, that testimony, together with the facts arrayed, might have raised an issue. But the ultimate and controlling fact which the Court held they tended to prove was conceded out of the case by defendants' own disclaimer. The opinion recognized that these circumstances did not tend to prove that the orders as executed were fictitious in view of undeniable evidence that they were real. But the evidence that the orders themselves were real was equally conclusive with that concerning their execution. And in overlooking this fact the learned majority erred.

Even in the absence of defendants' own direct and positive evidence to the contrary, the circumstances relied on that no grain was delivered, that defendants put up margins, were not in the grain business or likely or able to make or take delivery were, standing alone, wholly insufficient to establish an unlawful intent. See authorities, Respondent's Brief, 15-16, including *Clews* v. *Jamieson*, 182 U. S. 461. That no grain was received or delivered is accounted for by the fact that in every instance the initial orders were cancelled out by offsetting transactions regarded by the law as valid. *Board of Trade* v. *Christie*, 198 U. S. 236. That orders were solicited, or that the Carrollton office had a typewriter, telegraph key and blackboard surely, on reconsideration, will not be regarded as evidence of wagering or bucket shop transactions. The telegraph instrument transmitted defendants' actual orders and the blackboard recorded prevailing market quotations which were used for information and not as the basis for determining defendants' losses or gains.

## III.

### THE CONCLUSION THAT PLAINTIFF ENTERED INTO ACTUAL CONTRACTS ON THE EXCHANGES AS A DEVICE TO ENABLE DEFENDANTS TO GAMBLE OVERLOOKS AND IS CONTRARY TO THE RECORD FACTS AND THE APPLICABLE LAW.

If we are correct in the assertion that the majority opinion has overlooked defendants' own testimony, or has misconceived its legal effect, then the additional conclusion that the execution of actual contracts on the exchanges was a mere device to clothe marginal dealings with reality, is vulnerable for the same reasons. That conclusion relies and rests upon the same circumstances.

It is at fault for another reason. The opinion concedes and finds that orders were taken at Carrollton, relayed to Kansas City and corresponding contracts executed at the markets (3) with defendants' knowledge (5), that the purchases and sales were valid (3). An unlawful intent may not be spelled out of the performance of a lawful act or the exercise of a lawful right. In *Clews* v. *Jamieson, supra,* this Court said (182 U. S., l. c. 493):

> "The fact that at the time of the sale the complainants did not own any of the stock cannot support the presumption (of a gambling transaction), because it is perfectly valid to make such a sale, and an illegal intent accompanying the performance of a perfectly legal act cannot be presumed."

See also, *United States* v. *Isham,* 17 Wall. 496; *Bullen* v. *Wisconsin,* 240 U. S. 625, 630; *Iowa Bridge Co.* v. *Commissioner* (C.C.A.) 39 Fed. (2d) 777, 781; *Mecom* v. *Fitzsimmons Drilling Company,* 284 U. S. 183, 188-190, 76 L. Ed. 233, 238, 239.

The finding that plaintiff entered into actual contracts on the exchanges merely "to enable it to secure the data for the defendants' gains and losses" is justifiable only on the assumption that defendants never were and never intended to be parties to such agreements. It is true that as written, those contracts were between plaintiff and another broker-member of the exchange. But this was because required by the rules (R. 75, 79, 81) and Sec. 4(b) of the Grain Futures act. But they were executed for defendants as principals between whom and the other broker or his principal, privity of contract existed. *Clews* v. *Jamieson*, 182 U. S. 461. That defendants could have enforced and were bound to performance does not lie in doubt. *Clews* v. *Jamieson*, 182 U. S. 461, 482, 483. That they did enforce them and that they were not mere "make-believe" is unequivocally established, both by their testimony concerning, and their actions in, every transaction. Dickson testified that he gave the orders. They were confirmed in writing without objection on the day following each execution (R. 157). The losses and gains were fixed, not measured, by the contracts. They were not mere data for purported orders. Plaintiff's claim arose out of the fact that the transactions were real. It paid the clearing houses what defendants lost; defendants what they gained. The correctness of the accounts sued on was conceded.

There was no evidence or claim that plaintiff was not to execute these contracts on the exchanges, that defendants were not to be bound by them, that their terms were not to be carried out, or that defendants were merely to deal in differences or margins. The evidence of defendants themselves and their acts in every transaction were affirmatively to the contrary. The conclusion is unfounded that the orders as given were pretended or illegal or that the contracts as executed were devices.

## III.

### THE CONCLUSION THAT PLAINTIFF ENTERED INTO ACTUAL CONTRACTS ON THE EXCHANGES AS A DEVICE TO ENABLE DEFENDANTS TO GAMBLE OVERLOOKS AND IS CONTRARY TO THE RECORD FACTS AND THE APPLICABLE LAW.

If we are correct in the assertion that the majority opinion has overlooked defendants' own testimony, or has misconceived its legal effect, then the additional conclusion that the execution of actual contracts on the exchanges was a mere device to clothe marginal dealings with reality, is vulnerable for the same reasons. That conclusion relies and rests upon the same circumstances.

It is at fault for another reason. The opinion concedes and finds that orders were taken at Carrollton, relayed to Kansas City and corresponding contracts executed at the markets (3) with defendants' knowledge (5), that the purchases and sales were valid (3). An unlawful intent may not be spelled out of the performance of a lawful act or the exercise of a lawful right. In *Clews* v. *Jamieson, supra,* this Court said (182 U. S., l. c. 493):

> "The fact that at the time of the sale the complainants did not own any of the stock cannot support the presumption (of a gambling transaction), because it is perfectly valid to make such a sale, and an illegal intent accompanying the performance of a perfectly legal act cannot be presumed."

See also, *United States* v. *Isham,* 17 Wall. 496; *Bullen* v. *Wisconsin,* 240 U. S. 625, 630; *Iowa Bridge Co.* v. *Commissioner* (C.C.A.) 39 Fed. (2d) 777, 781; *Mecom* v. *Fitzsimmons Drilling Company,* 284 U. S. 183, 188-190, 76 L. Ed. 233, 238, 239.

The finding that plaintiff entered into actual contracts on the exchanges merely "to enable it to secure the data for the defendants' gains and losses" is justifiable only on the assumption that defendants never were and never intended to be parties to such agreements. It is true that as written, those contracts were between plaintiff and another broker-member of the exchange. But this was because required by the rules (R. 75, 79, 81) and Sec. 4(b) of the Grain Futures act. But they were executed for defendants as principals between whom and the other broker or his principal, privity of contract existed. *Clews* v. *Jamieson*, 182 U. S. 461. That defendants could have enforced and were bound to performance does not lie in doubt. *Clews* v. *Jamieson*, 182 U. S. 461, 482, 483. That they did enforce them and that they were not mere "make-believe" is unequivocally established, both by their testimony concerning, and their actions in, every transaction. Dickson testified that he gave the orders. They were confirmed in writing without objection on the day following each execution (R. 157). The losses and gains were fixed, not measured, by the contracts. They were not mere data for purported orders. Plaintiff's claim arose out of the fact that the transactions were real. It paid the clearing houses what defendants lost; defendants what they gained. The correctness of the accounts sued on was conceded.

There was no evidence or claim that plaintiff was not to execute these contracts on the exchanges, that defendants were not to be bound by them, that their terms were not to be carried out, or that defendants were merely to deal in differences or margins. The evidence of defendants themselves and their acts in every transaction were affirmatively to the contrary. The conclusion is unfounded that the orders as given were pretended or illegal or that the contracts as executed were devices.

In last analysis, the majority opinion rests, must rest, upon the proposition that an intent to avoid delivery by offsetting transactions is illegal. Plaintiff's office at Carrollton was not a bucket shop. It was an outside branch of a brokerage office where orders typical of those taken in all brokerage offices were initiated. If the orders as given were illegal, then most of those taken in brokerage offices and the contracts executed on the great stock and grain exchanges of the country are void under the ruling of the majority as applied to the record here.

## IV.

## McDONOUGH'S AUTHORITY

Every transaction was evidenced by a written confirmation between plaintiff and defendants reciting the execution by plaintiff for defendant and for his account, of a contract on an exchange. Each was lawful on its face (*Clews* v. *Jamieson, supra*). Defendants admitted receipt of these written confirmations at the close of each transaction and knowledge of their contents (R. 44-46, 153). McDonough had no authority, apparent or real, to vary their terms (R. 100-101, 102, 130). All orders initiating in Carrollton were wired to Kansas City for acceptance or rejection (R. 131). McDonough merely solicited orders. He made no contracts.

There is in the record no evidence that McDonough had or was clothed with authority to vary the terms of the written agreements. See, 2 Corpus Juris, pp. 645, 646. If McDonough had told defendants that their orders were mere pretenses and were not to be executed on the exchanges, defendants would have had no right to rely upon such statements. 2 Corpus Juris, pp. 563, 564. *A fortiori*

is this true in view of the daily written confirmations from Kansas City apprising them of the execution of actual transactions for their account. In *Anthony* v. *Jasper County*, 101 U. S. 693, 699, this Court said:

> "Every person who deals with or through an agent assumes all the risks of a lack of authority of him who attempts to bind another."

Certainly McDonough's authority to solicit and transmit orders to Kansas City did not include the power orally to change them into illegal wagers. It is equally true that the law will not permit third persons to assume an agent's authority to do an illegal act. In *Call* v. *Palmer*, 116 U. S. 98, 102, it is said:

> "An authority (to an agent) to violate the law will never be presumed."

## V.

## THE GRAIN FUTURES ACT

If the orders were mere pretenses the opinion holds and we concede that they were invalid at the common law. The Grain Futures act does not touch fictitious orders given or taken in bucket shops. On the other hand the opinion concedes that if the orders comported with the transactions as executed on the exchanges that they were valid and not subject to the Missouri law or statutes, being executed outside of that state. In neither situation is there a place for construction of the Federal act or its effect on existing state statutes.

The opinion says *obiter* that the Act neither recognized nor pronounced as valid transactions in futures on Federal contract markets. That question is not before the

court. It doubtless will arise at some time in a case, for example, where orders are taken in Missouri and executed on the Kansas City Board of Trade, a Federal contract market. In such a case it will have to be determined whether the rights of the parties and the validity of their contracts are governed by Section 4324 et seq., of the Missouri Statutes, or by the Federal act regulating futures transactions on Federal contract markets. Without urging again our contention that the Federal act superseded all existing state laws covering actual transactions in grain futures (see Resp.'s Brf. p. 18, Suppl. Arg. p. 16), we do feel justified in requesting that the opinion as finally written, should leave those important questions entirely open. As it stands, the dictum leaves the inference that most of the futures transactions executed on the Kansas City Board of Trade and on other Federal contract markets located in states having similar statutes are invalid notwithstanding the Federal act.

## CONCLUSION

If the opinion of the majority becomes the final decision of the Court it will fall heavily upon a very substantial portion of the business of grain and stock brokers as commonly conducted on the grain and stock exchanges of the country. Heretofore actual contracts executed by brokers for their principals on the exchanges calling for the future delivery of stocks or grain have, by the settled law, been held to be valid transactions notwithstanding an intent on the part of the principals to close them out by offsetting transactions without delivery in accordance with the rules and practices of the exchanges. We feel that the majority opinion announces a departure from those principles. For by it a customer's admitted and lawful intent to offset may be converted into a mere wagering or gambling intent upon the mere showing of facts and circumstances. By the decision the way will have been made easy by parol testimony, to brand as devices and repudiate as mere sham, solemn written contracts between brokers and customers, between the brokers themselves representing their principals, and the written rules of the exchanges which are a part of them. Our whole system of marketing grain and securities previously regarded as lawful will hereafter stand in the twilight zone between lawful speculation and gambling pretenses.

The opinion also cites with approval, *Harvey* v. *Merrill*, 150 Mass. 1. That case holds that an intent to set-off contracts of purchase and sale for future delivery by counter-transactions is unlawful. It is in conflict with the Christie Grain Case, *Clews* v. *Jamieson*, and a long line of Federal cases which hold that set-off is the legal equivalent of delivery. See Resp. Brf., pp. 15-16. We do not believe that the intent of the majority was to overturn the doctrine

of the common law long recognized and established by these Federal decisions; for the opinion recognizes the contracts on the exchanges as valid. Nevertheless, if the ruling in the Massachusetts case is approved, these transactions, recognized by this court and by economists as performing a useful function in commerce and business, are from now on proscribed, with devastating effect on the grain and stock brokerage business.

The sum of our contention is that if it is lawful to fulfill contracts of purchase and sale for future delivery by counter or offsetting transactions before delivery date, *that it is lawful so to intend in the beginning;* that the opinion of the majority is to the contrary, and that for this reason a rehearing should be granted.

Respectfully submitted,

I. P. RYLAND,
ARTHUR MAG,
ROY B. THOMSON,
ALFRED M. SEDDON,
PAUL R. STINSON,

*Counsel for Respondent,*
*Uhlmann Grain Company.*

RYLAND, STINSON, MAG & THOMSON,
*Of Counsel.*

State of Missouri, County of Jackson, ss:

Paul R. Stinson, of lawful age, being duly sworn, on his oath says that he is one of the counsel of record of the above named respondent; that the foregoing Petition for Rehearing is presented in good faith and not for delay.

IN WITNESS WHEREOF I have hereunto set my hand this 21st day of February, 1933.

PAUL R. STINSON,

Subscribed and sworn to before me this 21st day of February, 1933.

HAZEL M. DAVIS,
Notary Public.

My commission expires Jan. 3, 1935.

# SUPREME COURT OF THE UNITED STATES.

No. 63.—October Term, 1932.

A. P. Dickson, et al., Petitioners,
*vs.*
Uhlmann Grain Company.

On Certiorari to the United States Circuit Court of Appeals for the Eighth Circuit.

[February 6, 1933.]

Mr. Justice Brandeis delivered the opinion of the Court.

Uhlmann Grain Company, an Illinois corporation, brought this action of contract in the federal court for western Missouri against A. P. Dickson, a citizen and resident of Carrollton in that State. Four other cases of like character were, by agreement, consolidated with this one; and the five cases were tried below and are brought here as a consolidated suit. The pleadings, facts and proceedings stated in respect to the Dickson suit are applicable to all. The petition alleged that Dickson employed the company as a broker to purchase and sell for him grain on the Chicago, Minneapolis and Winnipeg exchanges; that he agreed to pay it commissions for such service and to reimburse it for any advances made; and that upon an account stated there is due a balance of $3,714.06, after crediting amounts received from the proceeds of purchases and sales and as margins.

Dickson denied the indebtedness and pleaded further in bar that the transactions out of which the indebtedness is alleged to have arisen were conducted wholly within the State of Missouri and were gambling, illegal under its laws; that no purchase or sale of grain was made for him and that none for him was contemplated by either party; that the intention of both was merely that the defendant should settle for differences in the market prices; that the transactions were not actual dealings by him in grain futures but dealings which as to him were wholly fictitious or pretended, and in fact merely gambling on the rise and fall of the market prices of grain.

The company replied that the obligation sued on arose from transactions in the purchase and sale of grain for future delivery as commonly conducted on boards of trade; that these transactions were carried out on the boards of trade of Chicago and Minneapolis which had been designated by the Secretary of Agriculture under

The [Federal] Grain Futures Act, September 21, 1922, c. 369, 42 Stat. 998, as "contract markets"; that the company was a member of each of said boards; and that each of the transactions of purchase and sale made by the company on behalf of Dickson was made by it with another member of the board and in compliance with the provisions of that Act.

The case was tried by the District Judge without a jury. Dickson contended that none of the alleged contracts made on the boards of trade was entered into on his behalf; that they were devices employed by the company on its own behalf in conducting at Carrollton what was actually a bucket shop in which to gamble in violation of the laws of the State; that he did not employ the company to make any contract for future delivery; that it was understood by him and the plaintiff, in each transaction, that receipt and delivery of the grain would not be required. On evidence which in abbreviated form occupies, besides the exhibits, 125 pages of the printed record, the judge found the facts as alleged in the plea in bar. He found specifically, among other things, that the transactions were wagering contracts "cloaked in the forms of law"; and that the company's transactions with or for the customers occurred wholly in Missouri. He declined to make any of the findings requested by the company, denied recovery and entered judgment for the defendant. A motion for a new trial was overruled.

The company appealed to the Circuit Court of Appeals and contended, among other things, (1) That there was no substantial evidence to support the finding that the transactions were fictitious or gambling transactions and hence invalid under the law of Missouri; and (2) That The Grain Futures Act superseded all relevant state laws relating to the subject of dealings in futures on "contract markets," and that the transactions in question, being valid under the federal Act, were necessarily valid under the laws of Missouri. The Circuit Court of Appeals, one judge dissenting, reversed the judgment of the District Court; and remanded the cause for further proceedings. 56 F. (2d) 525. This Court granted a writ of certiorari. 287 U. S. —.

*First.* The defense of illegality is predicated not on things done, or to be done, in Chicago or Minneapolis or Winnipeg, but wholly upon things done in Missouri. Uhlmann Grain Company, a member of the boards of trade of Chicago, Minneapolis, Kansas City,

Missouri, and Winnipeg, Canada, was engaged in the grain brokerage business. In 1924 it established a branch office at Carrollton, then a town of about 3200 inhabitants. It is not disputed that, upon receiving at Carrollton a purported order from Dickson, the Carrollton branch of the Grain Company communicated with its Kansas City office, and that the company thereupon entered into contracts on some other board of trade for future purchase or sale of grain. The contracts, so far as made within the United States, were entered into on either the Chicago or the Minneapolis board. Each of these boards had been designated by the Secretary of Agriculture a "contract market". The company was a member in good standing of each of the boards. Each contract was made in the name of the company as principal with another member of the board as principal. Each contract was evidenced by a record in writing as prescribed by the Grain Futures Act. And after each such contract was entered into by the company, it mailed, from its office in Kansas City to its customer at Carrollton, a written confirmation of his alleged order and of its execution, which recited the date of the contract, the quantity and kind of grain bought and sold, the contract price per bushel of the commodity, the delivery month, and the place where the contract of purchase or sale was executed.[1] The requirements of the federal act appear to have been complied with. There is no suggestion that these contracts violated the law of the place where the exchange was situated. It may be assumed that they were valid as between the Uhlmann Grain Company and its fellow members of the exchanges.

But there were two distinct agreements: that between customer and company, in which both parties acted as principals; and that

[1]The alleged confirmation stated also: "All transactions made by us for your account contemplate the actual receipt and delivery of the property and payment therefor. We reserve the right to close these transactions when deposits are running out, without further notice. We also reserve the privilege of clearing all transactions through Clearing Associations, if there be any, from day to day in accordance with the usages, rules and regulations of the Exchange where the trade is made, prevailing at the time. All purchases and sales made by us for you are made in accordance with and subject to the rules, regulations and customs of the Chamber of Commerce or Board of Trade where the trades are made and the rules, regulations and requirements of its Board of Directors, and all amendments that may be made thereto. The contract is made under the authority of the Act of Congress known as 'The Future Trading Act'."

between the company and brokers on the exchange, in which both of the parties there likewise acted as principals. It does not follow that because the contracts between the members of the exchanges were valid, those entered into by the company at Carrollton with Dickson and its other customers were valid also. Compare *Board of Trade* v. *Christie Grain & Stock Co.*, 198 U. S. 236, 249-250. See, also, *Harvey* v. *Merrill*, 150 Mass. 1; *Riordan* v. *McCabe*, 341 Ill. 506, 512-515. Whether the customer, in his agreement with the company, ordered that contracts be entered into in his behalf on the exchange, is the serious issue of fact in the case at bar. If the customer did so order by his agreement, we should have to determine by the law of which state the defense of illegality is governed. If, as Dickson contends, and the trial court found, Dickson's agreement did not contemplate the execution of transactions on the exchange in his behalf, clearly the defense of illegality is governed by the law of Missouri, unless that law has been superseded by The Grain Futures Act.

*Second.* There was evidence that the transactions out of which the indebtedness is alleged to have arisen were not in fact orders to enter into contracts on behalf of the defendants to purchase or sell for future delivery but were devices knowingly employed by the company solely to enable them to gamble. They testified that they were assured by the local manager that they would never have to receive or deliver any grain as a result of their speculations. And there is no lack of evidence to support a finding that in doing so the manager acted within the scope of his authority. It is admitted that no grain was actually delivered by or to the plaintiff's customers. The accounts of the defendants were carried on margin; and the extent of their purported obligations exceeded their financial capacity. It is clear that their purpose was solely to make a profit by reason of the fluctuations in the market price of grain; and that the plaintiff knew this. The Carrollton office was equipped in a manner common to bucket shops; its furnishings consisted of a desk, chairs, a typewriter, blackboard, and telegraph instrument. The branch manager testified, as did the defendants, that he was active in soliciting business among the townspeople. Between 40 and 50 local residents from widely divergent walks of life in no way connected with purchasing or selling grain became customers of the branch. Of the five defendants in the cases consolidated for trial, who were the plaintiff's largest customers

at Carrollton, two were farmers, two were clothing merchants, and one was an ice dealer. These defendants, who were not in the grain business, who had never traded on a grain exchange, and who had no facilities for handling grain, purported to buy and sell in amounts up to 50,000 bushels in a single transaction. In a period of nine months the total number of bushels involved in the transactions of four of the defendants, according to one of the plaintiff's witnesses, was 2,360,000. The defendants undoubtedly knew that the company regularly entered into contracts on the exchanges corresponding to the transactions at Carrollton. But the evidence warrants the conclusion that the contracts on the exchange were entered into by the company to enable it to secure the data for the defendants' wagers and to provide the means for determining the defendants' gains and losses; and that both the plaintiff and the defendants so regarded the contracts on the exchanges. So far as concerned the obligations which they undertook, the customers were in the same position as if they had simply wagered against the company on the fluctuations in the prices of grain. Thus, the evidence supports the conclusion that the transactions between the defendants and the company were executed and performed wholly in Missouri; and the law of Missouri accordingly governs, unless prevented by the Federal Act.

The burden was on the defendants to establish the defense of illegality under the law of Missouri, *Spencer* v. *Crawford,* 92 Mo. 498, 506; and the evidence was ample to support the conclusion of the trial court that the defense had been sustained. The Missouri Bucket Shop Law, Rev. Stat. (1929), secs. 4316-4323, defines transactions in grain declared to constitute gambling and makes it punishable either to enter into the prohibited transactions or to keep a place where they are entered into. Section 4317 declares that a bucket shop is a place wherein the person carrying on the shop goes through the form of buying and selling certain commodities for other persons "at prices fixed or pretended to be fixed by trades or transactions made or offered to be made in same on boards of exchange or otherwise, but wherein there is in fact no actual purchase and sale, or sale and purchase of such commodity for or on account of the party or parties thereto." The statute further provides in section 4318 that all such "pretended" sales or agreements, "wherein there is, in fact, no actual purchase and sale

or sale and purchase of such commodities for or on account of the party or parties thereto, are hereby declared gambling and criminal acts, whether the order or contract for the pretended purchase or sale of such property purports to be offered, accepted, executed, or consummated in this state or in any other state or country; *Provided,* the offer to make such pretended purchase or sale of said property is placed or given or communicated from this state; and any person violating the provisions of this section shall be guilty of a felony.''[2]

The state statute imposed a criminal penalty for the negotiation of what was at common law an illegal contract. Compare *Irwin* v. *Williar,* 110 U. S. 499, 508-510; *Embry* v. *Jemison,* 131 U. S. 336, 345. Under the Missouri statutes it is no defense to a criminal prosecution that the company entered into transactions for future purchases and sales on a contract market, even where the illegality consists in dealing in futures on margin. *State* v. *Christopher,* 318 Mo. 225.[3] In the case at bar the company was a party to the illegal contracts with its customers; and hence it cannot recover for commissions or for advances. The trial court accordingly was right in entering judgment for the defendants, unless the Missouri law has been superseded by the federal Act.

---

[2]The defense rests solely on Mo. Rev. Stat. (1929), secs. 4316 to 4223; not on secs. 4324-4326, 4329. The former sections derive from Mo. Laws 1887, p. 171; the latter, from Mo. Rev. Stat. (1889) secs. 3931-3936; see State *v.* Long, 261 Mo. 314, 316. The latter sections prohibit the purchase or sale of grain on margin where there is an intention not to make or receive delivery, and declare contracts made in violation of this prohibition void, even if only one of the parties to the contract has an intention not to deliver. Under the latter sections it has been held that such an intention on the part of a customer for whom a broker has executed future contracts is sufficient to defeat the broker's claim for commissions, even though he was unaware of that intention, Price *v.* Barnes, 300 Mo. 216, 229, 231; but that the provisions do not apply where the execution of the contracts occurred in another state pursuant to orders given to the broker in Missouri. Edwards Brokerage Co. *v.* Stevenson, 160 Mo. 516, 527-528; see Connor *v.* Black, 119 Mo. 126, 141; Price *v.* Barnes, *supra,* at p. 232; also, Grain Co. *v.* Stonebraker, 202 Mo. App. 81; Claiborne Commission Co. *v.* Stirlen, 262 S. W. 387. These cases have no application in the case at bar.

[3]Compare the statutes enacted in recent years in several states, declaring that contracts for future delivery of grain and other commodities are valid and enforceable if made according to the rules of an exchange, actually executed on the exchange and performed or discharged according to its rules, and

*Third.* The Grain Futures Act did not supersede any applicable provisions of the Missouri law making gambling in grain futures illegal. The Grain Futures Act recites in § 3 that transactions in grain involving the sale thereof for future delivery as commonly conducted on boards of trade and known as "futures" are affected with a national public interest; that they "are susceptible to speculation, manipulation and control"; and that the resulting obstruction to and burden upon interstate commerce in grain and the products and by-products thereof "render regulation imperative for the protection of such commerce." Section 4 declares that "it shall be unlawful" to engage in such transactions except, among other things: "(b) Where such contract is made by or through a member of a board of trade which has been designated by the Secretary of Agriculture as a 'contract market', . . . and if such contract is evidenced by a record in writing which shows the date, the parties to such contract and their addresses, the property covered and its price, and the terms of delivery."

The Federal Act declares that contracts for the future delivery of grain shall be unlawful unless the prescribed conditions are complied with. It does not provide that if these conditions have been complied with the contracts, or the transactions out of which they arose, shall be valid. It does not purport to validate any dealings. Nor is there any basis for the contention that Congress occupied the field in respect to contracts for future delivery; and that necessarily all State legislation in any way dealing with that subject is superseded. The purpose of the Grain Futures Act was

made with or through a member in good standing. Ark. Acts 1929, No. 208, Ark. Dig. Stat. (1931 Supp.) §§ 2661a-2661k; Ga. Acts 1929, p. 245, Ga. Code (1930 Supp.) §§ 4264(1)-4264(8); Miss. Acts 1928, c. 304, Miss. Code (1930) §§ 1827-1837; Okla. Laws 1917, c. 97, Okla. Stat. (1931), c. 15, art. 24; S. Car. Acts 1928, No. 711, S. Car. Code (1932), §§ 6313-6321; Tex. Acts 1925, c. 15, Tex. Rev. Pen. Code (1925), arts. 656-664. The South Carolina and Texas statutes contain a proviso declaring that such contracts shall be unlawful where it is not "contemplated" by the parties that there be actual delivery; and the Georgia statute contains a proviso declaring such contracts unlawful where it is not "stipulated" by the parties thereto that there shall be actual delivery. For an analysis of the state statutes concerning dealings in futures, see 45 Harvard Law Review 912-925. Compare E. W. Patterson, Hedging and Wagering on Produce Exchanges, 40 Yale Law Journal 843.

to control the evils of manipulation of prices in grain.[4] Such manipulation, Congress found, was effected through dealings in grain futures. See *Board of Trade* v. *Olsen,* 262 U. S. 1, 32. Many persons had advocated, as a remedy, that all future trading be abolished.[5] Congress took a less extreme position. It set up a system of regulation and prohibited all future trading which did not comply with the regulations prescribed. But it evinced no intention to authorize all future trading if its regulations were complied with. Both the language of the Act and its purpose are clear; and they indicate the contrary. The Missouri law is in no way inconsistent with the provision of the Federal Act. It does not purport to legalize transactions which the Federal Act has made illegal. It does not prescribe regulations for exchanges. Obviously, manipulation of prices will not be made easier, or the prevention of such manipulation be made more difficult, because the State has declared that certain dealings in futures are illegal and has forbidden the maintenance within its borders of places where they are carried on. Since there is nothing in the state law which is inconsistent with, or could conceivably interfere with the operation or enforcement of, the federal law, the statute of Missouri was not superseded. Compare *Savage* v. *Jones,* 225 U. S. 501, 533.[6]

*Reversed.*

---

[4]See the remarks of Mr. Tincher, chairman of the committee reporting the bill, before the House. 62 Cong. Rec., 67th Cong., 2d Sess., p. 9434. The title of the Act is "An Act for the prevention and removal of obstructions and burdens upon interstate commerce in grain by regulating transactions on grain futures exchanges, and for other purposes." A cardinal argument for the passage of the Grain Futures Act was the severe decline in prices on the Chicago board of trade subsequent to the decision in Hill *v.* Wallace, 259 U. S. 44, holding sections of the Future Trading Act unconstitutional. See H. R. No. 1095, 67th Cong., 2d Sess., p. 2; Sen. No. 871, 67th Cong., 2d Sess., p. 7; 62 Cong. Rec., p. 12733; compare, *id.*, p. 9429.

See, also, the statements of the purpose of the Future Trading Act, H. R. No. 44, 67th Cong., 1st Sess., p. 2; Sen. No. 212, 67th Cong., 1st Sess., p. 4; and the disavowal of an intention to "legalize" gambling, 61 Cong. Rec., 67th Cong., 1st Sess., pp. 1313, 1339-1340, 1370, 1374.

[5]See *id.*, p. 9428. For a summary of prior bills introduced in Congress for the control of future trading, some of them providing for its prohibition, see G. W. Hoffman, Future Trading Upon Organized Commodity Markets, pp. 364-367.

[6]Compare, also, Sligh *v.* Kirkwood, 237 U. S. 52, 62; Asbell *v.* Kansas, 209 U. S. 251, 257; Crossman *v.* Lurman, 192 U. S. 189, 199; Reid *v.* Colorado, 187 U. S. 137, 149; Missouri, Kansas & Texas Ry. Co. *v.* Haber, 169 U. S. 613, 623; Sherlock *v.* Alling, 93 U. S. 99.

# SUPREME COURT OF THE UNITED STATES.

No. 63.—October Term, 1932.

A. P. Dickson, et al., Petitioners,
*vs.*
Uhlmann Grain Company.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Eighth Circuit.

[February 6, 1933.]

Mr. Justice Butler, dissenting.

I am unable to join in the decision just announced. My understanding of the evidence constrains me to dissent.

Sections 4316-4323, Mo. R. S., 1929, prohibit bucketshop transactions in Missouri. Section 4318 denounces as gambling pretended purchases and sales "wherein there is, in fact, no actual purchase and sale or sale and purchase of such commodities for or on account of the party or parties thereto." This Court rests its decision solely on that provision.

Section 4324 denounces as gambling all purchases and sales "without any intention of receiving and paying for the property so bought, or of delivering the property so sold." The judgment of the district court appears to be based upon the conclusion that the transactions between plaintiff and defendants violated that section. But the contracts here involved were executed outside Missouri and, as shown by the opinion of this Court, are not governed by § 4324. It is not involved. *Edwards Brokerage Co.* v. *Stevenson*, 160 Mo. 516, 527-528. *Atwater* v. *Brokerage Co.*, 147 Mo. App. 436, 448. *Hood Co.* v. *McCune*, 235 S. W. 158. *Claiborne Commission Co.* v. *Stirlen*, 262 S. W. 387, 388. Cf. *State* v. *Gritzner*, 134 Mo. 512, 526-527. *State* v. *Christopher*, 318 Mo. 225, 237.

The evidence shows affirmatively and without contradiction that plaintiff and defendants did not intend to and did not violate § 4318.

Plaintiff is not a bucket shop proprietor. It has been engaged for many years in operating grain elevators including a terminal one of great capacity and in dealing on its own account in cash

grain. It long has been a member of the Chicago, Minneapolis, Kansas City and Winnipeg exchanges and a broker executing customers' orders for the purchase and sale of grain for future as well as for immediate delivery.

In 1924, from April to late November, it had a branch at Carrollton, Missouri, in charge of one McDonough. This branch was connected by private telegraph wire with its Kansas City office and regularly posted prices at which purchases and sales of grain were being contemporaneously made on the exchanges. McDonough solicited from defendants and others in and about Carrollton orders for the purchase and sale of grain for future delivery to be executed by plaintiff upon the exchanges and, upon information obtained from plaintiff, gave advice to those desiring to speculate in contracts for the buying and selling of grain on the exchanges.

He had no authority to bind plaintiff to execute orders and transmitted any obtained by him to the Kansas City office. If plaintiff rejected the order, it notified him at once. An accepted order was sent to plaintiff's office in Chicago and, if for purchase or sale in that city, was executed by its representative in the grain pit on the exchange there. An order for execution at Winnipeg was sent by wire to plaintiff's broker there. Each order forwarded was identified by the customer's name which for brevity in transmission was usually indicated by the number given to his account. Unless the customer stipulated otherwise, it had to be executed on the day it was given.

In making the purchases and sales on the exchanges, members dealt with each other as principals, but each was required separately to execute each order and, when called on, to furnish the name of his customer to the broker with whom he dealt. The rules of such exchanges required a member to furnish to his customer desiring the information the name of the other broker. And plaintiff made available to defendants' counsel its records disclosing the names of the other parties to the purchases and sales in question.

Upon the execution of an order, plaintiff promptly wired McDonough the result and on the same day sent by mail directly to the customer a confirmation showing the kind and quantity of grain, the time specified for delivery, and the price at which it was bought or sold. Each confirmation contained the statement that "all transactions made by us for your account contemplate

the actual receipt and delivery of the property and payment therefor." The customer was bound within the specified future month to receive or deliver the grain he had contracted to buy or sell unless prior to that time he had sold or otherwise closed his contract.

All the contracts here involved were, when made, intended by the parties to be and in fact were closed by such counter transactions prior to the time fixed for delivery. In accordance with usage prevailing on all contract market exchanges, defendants' contracts of purchase were closed by corresponding sales and vice versa. And in each instance plaintiff sent a statement to the defendant showing the respective dates of purchase and sale, the quantity and kind of grain, the specified time for delivery, the amounts of plaintiff's commission and of federal taxes, together with the net gain or loss.

Defendants admit that they intended the orders to be executed on the exchanges, that they were so executed, and that the accounts are correct. The advances sued on were made and the commissions claimed were earned. Plaintiff did not sell what defendants bought or buy what they sold. It did not gain when they sustained losses on their contracts to purchase or sell or lose when they made gains thereon. There was no betting between plaintiff and defendants.

The trial judge, taking plaintiff's requests for findings as a basis, characterized the transactions as "purported", "pretended" and "fictitious." It quite clearly appears, from the form and language as well as from the substance of the findings* and

*The findings followed the form of plaintiff's requests and employed the same language, except as indicated below. The words italicized were added by the court; those within brackets were deleted from plaintiff's requests.

1. In all of the transactions involved in these suits the plaintiff *purported to act* [acted] as broker for defendants in the purchase and sale of grain for future delivery, and in no case did plaintiff *pretend to* enter into any other than a brokerage contract with any defendant.

2. Every *pretended* purchase and *pretended* sale was executed by plaintiff for defendant on the Grain Exchange in Chicago, Illinois, Minneapolis, Minnesota, or Winnipeg, Manitoba. None of the contracts of purchase or sale involved in these suits *purported to have been* [was] executed in Missouri.

3. Every transaction was a *pretended* contract of purchase or sale of grain for future delivery, *purported to have been* executed on grain exchanges by plaintiff in behalf of defendants on the one side, in which the plaintiff was a clearing member of the exchange where executed and in which the *purported* other party to the transaction, either acting for himself or a *pretended* undisclosed principal, was also a clearing member.

4. Every *pretended* contract of purchase or sale executed by plaintiff for defendants was *purported to have been* carried out in conformity with and in

from his filed opinion, that he held that, as actual deliveries were not intended or made, the contracts creating the right to make or call for delivery on specified terms violated § 4324. The characterizations, like the statement in the opinion that the transactions were "wagering contracts . . . cloaked with the forms of law", may not be deemed to be findings of fact. They are mere assertions in the nature of conclusions of law. The effect or weight to be given them necessarily depends upon the details and circumstances shown by the evidence. Made as they were through a mis-

---

compliance with the rules of the particular grain exchange on which it was *pretended to have been* closed.

5. Every contract *purported to have been* executed by plaintiff on behalf of defendants *pretended to call* [actually called] for the purchase or sale of grain for future delivery and was evidenced by a memorandum in writing under which, and under the customs and rules of the exchanges were executed, the parties were obligated *in form and pretense* to take or make delivery, or to respond in damages for failure to do so. That under the custom and practice existing and under the rules of the exchanges, off-setting or ringing purchases or sales *under proper circumstances in good faith* were permitted in lieu of the actual delivery of grain contracted for.

6. Every transaction involved in these suits initiated by a *purported* purchase or sale was offset by a *pretended* sale or *pretended* purchase executed in the same manner as the initiating *purported* purchase or sale. Every *pretended* purchase or sale was closed out by a *purported* offsetting transaction before the delivery time arrived and was *purported to have been* executed by plaintiff on the orders and at the instruction of defendants, save and except as to some of the last transactions, which were closed out by plaintiff without instruction from such defendant at a time when defendant had no cash margin to protect his transactions.

7. At all the times in question plaintiff was a member in good standing of the grain exchanges on which the *pretended* contracts of purchase and sale were executed, and plaintiff constantly maintained a margin with the Clearing House of each Grain Exchange as security for the performance of its *bona fide* contracts. All transactions of *pretended* purchase and *pretended* sale executed by plaintiff for defendants were *purported to have been* contracted for on the Exchanges in the name of plaintiff [plaintiff was responsible for their performance, and in each instance where the sale price was for an amount less than the purchase price, plaintiff acting as defendants' broker paid the difference to the Clearing House of the Exchange upon which the transactions were carried out. In none of the transactions did plaintiff profit or lose by a loss or profit to defendants. In all of them it acted only as a broker for defendants.]

8. None of the *pretended* purchases or sales were *purported to have been* executed at Carrollton, Missouri. Orders were *pretended to have been* given by defendants from time to time at Carrollton to plaintiff's local office for *purported* execution on the Grain Exchanges at Chicago, Minneapolis and Winnipeg; but none of these orders were *purported to have been* accepted by plaintiff at Carrollton. All of them were telegraphed to Kansas City for acceptance or rejection, and if accepted, were *purported to have been* carried out by plaintiff by telegraphic instructions emanating from Kansas City and by *pretended* written confirmation of the execution of the order, which *pretended* written confirmations would be mailed from Kansas City to the customer.

taken view of the applicable law, these declarations may not reasonably be adopted here as findings that no such contracts were made and that plaintiff and defendants indulged in the make-believe denounced by § 4318.

There is no evidence of any violation of the bucketshop laws, nor is there any suggestion that the transactions shown can be held illegal except by force of the Missouri Statute. I do not disagree with the majority that the Federal Grain Futures Act has not superseded the statutes of Missouri applicable to these transactions.

I am of opinion that the judgment of the district court should stand reversed and that the judgment of the circuit court of appeals should be affirmed.

Mr. Justice STONE and Mr. Justice CARDOZO join in this dissent.

---

9. That no records of the accounts of plaintiff with the defendants were kept at Carrollton; that no moneys were paid out to customers in Carrollton, but remittances were mailed direct by check from Kansas City. All statements, all *pretended* "P & S's", all *pretended* confirmations of the *purported* execution of purchases and sales, were mailed to defendants from Kansas City. The Carrollton office merely *pretended to* receive[d] and transmit[ted] *purported* orders to its customers to Kansas City for *pretended* execution on the Grain Exchange designated in the customer's *pretended* order.

10. *All* [none] of the transactions of purchase and sale executed by plaintiff for defendant were fictitious transactions. *None* [all] of them were actually executed between clearing members of the Exchange where *pretended to have been* consummated. [one of whom would be plaintiff acting for defendant]

11. In *all* [none] of the transactions [did] plaintiff bet with its customers *and took* [or take] the other side of the deal.

[In no transaction did plaintiff and defendant settle the gain or loss of defendant other than by ascertaining the actual difference between the price at which the commodity was bought and that at which it was sold. In no transaction of purchase or sale did plaintiff and defendant fix a fictitious profit or loss to defendant by an ascertainment of the difference between the contract price and the market price on the day fixed for delivery.]

12. In each transaction, after a *pretended* order to sell or purchase was *purported to have been* executed by plaintiff in behalf of defendant, written confirmation thereof was immediately mailed by plaintiff to defendant. Every written confirmation recited that—

"All transactions made by us for your account contemplate the actual receipt and delivery of the property and payment therefor".

The court's findings did not cover other matters included in plaintiff's requests: the scope of its local agent's authority, whether the orders were made and recorded in accordance with the rules and regulations of the contract markets in which they were executed, and the intent of the parties as to receipt and delivery of wheat bought.